

# **Exhibit A**

## THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS  
NORTHERN DISTRICTSUPERIOR COURT  
JURY TRIAL DEMANDED  
216-2021-CV-000623PS DIVE SHOP, LLC d/b/a PORTSMOUTH SCUBA and  
CHARLES OXENDINE

v.

HISCOX DEDICATED CORPORATE MEMBER Ltd. and  
SONYA MELISSA TIREY, Personal Representative of the Estate of TONYA TIREY  
CIANCHETTE**SECOND AMENDED COMPLAINT FOR DECLARATORY JUDGMENT****INTRODUCTION**

Plaintiffs, PS Dive Shop, LLC, d/b/a Portsmouth Scuba, (“Dive Shop”), and Charles Oxendine by their Attorneys, bring this action for declaratory judgment seeking the Court’s determination as to whether their commercial general liability insurer, Hiscox Dedicated Corporate Member Ltd. (hereinafter “Hiscox”) owes defense and indemnity to the Plaintiffs in connection with a personal injury claim that is anticipated to be filed against them in the State of Maine by the Defendant Sonya Melissa Tirey, Personal Representative of the Estate of Tonya Tirey Cianchette. The Plaintiffs were formally put on notice on June 18, 2021 that Sonya Melissa Tirey, Personal Representative of the Estate of Tonya Cianchette intends to pursue a claim against them in connection with her death. Upon receiving the notice, the plaintiffs provided notice to their insurer of the claim.

On September 16, 2021, attorneys for the Plaintiffs received correspondence from counsel for the insurer setting forth a “Reservations of Rights” in which they stated that they did not believe that coverage existed for the Claim under the Policy.

### **PARTIES**

1. Plaintiff PS Dive Shop LLC d/b/a Portsmouth Scuba is a limited liability corporation organized and existing under the laws of the State of New Hampshire and has a principal place of business at 915 Sagamore Avenue, Portsmouth, NH USA.

2. Plaintiff Charles Oxendine is the owner of PS Dive Shop LLC d/b/a Portsmouth Scuba who purchased the relevant insurance policy at issue and resides at 731 Beech St, Manchester, NH 03104.

3. Defendant Hiscox Dedicated Corporate Member, Ltd. is the lead underwriter listed under the Schedule of Insurers for the insurance policy at issue and is headquartered at 96 Pitts Bay Road, Pembroke Hamilton, Bermuda.

4. Defendant Sonya Melissa Tirey, Personal Representative of the Estate of Tonya Tirey Cianchette, is an individual residing at 58 Wedgewood Drive, Saco, Maine, 04072.

### **JURISDICTION AND VENUE**

5. Plaintiffs brings this Declaratory Judgment action pursuant to N.H. Rev. Stat. Ann. § 491:22 to redress their rights. This Court has jurisdiction over the subject matter in this action pursuant to N.H. Rev. Stat. Ann. § 491:7.

6. Venue is proper under N.H. Rev. Stat. Ann. § 507:9 because the Plaintiff Charles Oxendine resides in Manchester, New Hampshire located in Hillsborough County.

### **SUMMARY OF THE CLAIM**

7. This is an action for declaratory judgment pursuant to N.H. Rev. Stat. Ann. §491:22 for the purpose of determining the question, as hereinafter more fully appears, of whether Defendant Hiscox is required to provide coverage under the Insurance Policy, FD001261, to Plaintiffs (hereinafter “Policy”).

8. Declaratory judgment is proper because the Plaintiffs are seeking a final determination with respect to the existence of insurance coverage from its insurer.

9. Although no suit has been brought, a notice of claim was received by the Plaintiffs on or about June 18, 2021, and Plaintiffs promptly notified their insurer on or about June 23, 2021 upon receipt. Nearly three months after putting their insurer on notice of the potential claim, Plaintiffs received a “Reservation of Rights” letter on September 16, 2021.

10. Plaintiffs’ action for declaratory judgment is timely under the six-month statutory requirement. N.H. Rev. Stat. Ann. §491:22 (III).

11. Plaintiffs contend that coverage should exist under the policy at issue and that the defendant Hiscox shall provide defense and indemnity in connection with the claim anticipated to be filed in the State of Maine by Defendant Tirey.

12. The policy at issue contains five (5) sections of coverage set forth on the declarations page: Section 1: Building and Personal Property; Section II: Commercial General Liability; Section III: Crime; Section IV: Underwater Liability; Section V: Dive Travel E&O. (See *Commercial General Liability Policy*, attached hereto as Exhibit 1).

13. The relevant section of the policy at issue in connection with the claim is Section IV: Underwater Liability.

14. Beginning at page 66 of the policy, Section IV is entitled “Underwater Instructors Professional Liability Insurance”.

15. The policy provides, in pertinent part, “Subject to the Limit of Liability for Damages, the Underwriters agree to pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as Damages for Bodily Injury and/or Property Damage for Claims arising from an Event caused by *any negligent act, error or omission* in the rendering of or failure to render Professional Services by an Insured.”

(Emphasis added)

16. Notwithstanding this language, the policy goes on to provide a total of **forty-one (41) exclusions** for such coverage. (*Exhibit 1, pg. 68-70*)

17. The Policy should be found to be illusory as a whole because these exclusions provide illusory liability coverage in a specialized policy which was reasonably understood to provide insurance for claims associated with owning and operating a dive shop and offering scuba diving courses.

18. Furthermore, there are multiple policy exclusions which are ambiguous in total and should be read in favor of the insured.

19. In addition, Defendant Hiscox, through its agent, Peter Meyer of First Dive Insurance/OWL Underwriting led Plaintiffs to believe that coverage termination did not affect the “Cianchette matter” and that he had insurance coverage for this claim.

### **STATEMENT OF FACTS**

20. The insurance Policy at issue, policy no. FD001261 (“the Policy”) provided by Defendant Hiscox went into effect on July 18, 2020, and expired July 18, 2021.

21. The Policy provides coverage in Section IV for underwater liability, which includes Form FD-UW0001 “Underwater Instructors Professional Liability – CLAIMS MADE COVERAGE” which is described as “applies to diving instruction and supervision only as approved and sanctioned by the training agencies listed on the Schedule of Dive Staff and subject to the terms, limits and conditions of this Policy. (See Exhibit 1, pg. 3). Plaintiff Charles Oxendine is listed on the Schedule of Dive Staff (See Exhibit 1, pg. 5).

22. The claim anticipated to be filed by Defendant Tirey as Personal Representative for the Estate of Tonya Tirey Cianchette is in connection with a scuba diving accident that occurred on August 30, 2020, when Plaintiff Charles Oxendine (“Instructor Oxendine”) was providing diving instruction and supervision under the terms of the policy.

23. On August 28, 2020, Instructor Oxendine had met with students, Ms. Tonya Tirey Cianchette and Mr. Isaac Takushi at the dive shop and went over the deep

water navigation book chapters and knowledge reviews in preparation for their dive on August 30, 2020.

24. On August 30, 2020, Instructor Oxendine was teaching students on a training scuba dive to obtain their Advanced Open Water Certification from PADI®.

25. The plan was to perform a navigation dive and a deep water dive but not to exceed a depth of 70 feet.

26. Advanced Open Water certification is only available after a scuba diver has previously obtained (and maintained) certification as a “PADI® Open Water Diver.”

27. In order to obtain the certification as an Advanced Open Water Diver, each student must complete 15 hours of classroom training before performing two skills dives and three electives.

28. On August 30, 2020, Instructor Oxendine was taking Defendant Tirey’s decedent, Tonya Tirey Cianchette with another student, Mr. Takushi to complete two of the dives needed for their certification.

29. Instructor Oxendine, Mr. Takushi, and Ms. Cianchette descended to 40’ together with their hands locked. Shortly after reaching their planned depth, Instructor Oxendine noticed he was out of air, he dropped his weight on the bottom, and signaled for Mr. Takushi and Ms. Cianchette to surface.

30. Both Mr. Takushi and Ms. Cianchette surfaced with Instructor Oxendine but all of them became caught in a surface current. Instructor Oxendine swam to a nearby buoy and instructed Mr. Takushi and Ms. Cianchette to swim to him. Mr.

Takushi was pulled into the buoy by Instructor Oxendine, but Ms. Cianchette was too far away to be pulled in.

31. Ms. Cianchette was alert and responsive upon reaching the surface and was communicating verbally with Mr. Takushi and Instructor Oxendine at that time.

32. Instructor Oxendine signaled the boat to pull anchor and drive to their location to pick them up.

33. Ms. Cianchette struggled to swim against the current to stay in the area of Instructor Oxendine and Mr. Takushi and is believed to have said she would go under the surface to swim back to the buoy.

34. It was later learned that Ms. Cianchette must have proceeded to dive down once again. This is based upon the finding that her downloaded dive profile showed that Ms. Cianchette dove ultimately to a depth of 90.8' for approximately four minutes. Then she ascended rapidly in less than 30 seconds.

35. Upon information and belief, as the boat proceeded towards Instructor Oxendine and Mr. Takushi at the buoy, the boat captain saw that Ms. Cianchette was floating at the surface.

36. The boat picked up Ms. Cianchette first while the other recreational divers in the water joined Instructor Oxendine and Mr. Takushi at the buoy while linked together on the surface.

37. When the boat found Ms. Cianchette she was pulled abroad unresponsive and later pronounced dead at Portsmouth Regional Hospital. Cause of death was "barotrauma."

**COUNT I**

**DECLARATORY JUDGMENT**

38. The Plaintiffs incorporate by reference all preceding paragraphs as if expressly stated herein.

39. PS Dive Shop, LLC d/b/a Portsmouth Scuba seeks a determination that there is insurance coverage available under the Policy for the death of Ms. Cianchette as it relates to the events of August 30, 2020, despite the policy having forty-one (41) exclusions.

40. Plaintiffs obtained an insurance policy containing coverages for commercial general liability and professional liability from a diving insurance company. This was a specialized policy for businesses associated with scuba diving.

41. Plaintiffs were not aware that within such policy that contained forty-one (41) exclusions, there laid traps of exposure to liability because the Policy rested on the notion that coverage did not extend outside of the parameters of the PADI ® textbooks and the organizations' teachings and/or policies. (See Exhibit 1, Exclusions No. 23, 24, 28, 33 and 38, pg. 69).

42. Furthermore, the coverage being offered was illusory in that there are two further exclusions that require the insured to obtain liability waivers in order for coverage to be provided. (See Exhibit 1, Exclusions No. 31 and 32).

43. It was reasonable of Plaintiffs to understand that by purchasing a specialty insurance, the Policy would cover claims that would arise under the conditions with which a dive shop business operates.

44. “The obligation of an insured to read an insurance policy is not obviated unless the policy is so constructed that a reasonable man in the position of the insured would not attempt to read it.” Croteau v. John Hancock Mut. Life Ins. Co., 461 A.2d 111, 113–14 (N.H. 1983) (internal quotations omitted). A seventy (70) page commercial general liability and professional liability policy with forty-one (41) exclusions of coverage for professional liability is not going to be readily understood by a reasonable man. “When such a policy is involved, the insured may rely on the representations of the agent or even solely on his own understanding of the insurance he is purchasing, as long as that reliance is reasonable.” Storms v. U. S. Fid. & Guar. Co., 388 A.2d 578, 580 (N.H. 1978).

45. This policy was not interpreted by Plaintiffs to carve out endless situations that hadn’t been contemplated to occur to distinguish when coverage may exist.

46. Furthermore, Plaintiffs’ reasonable understanding was that this policy protected the dive shop and dive instructors’ liability, and it was for this reason that they purchased “specialty” insurance.

47. An illusory promise is when “[w]ords of promise which by their terms make performance entirely optional with the ‘promisor’ do not constitute a promise.” Restatement (Second) of Contracts § 77 (1981). “[A]n exclusion that “completely swallows” coverage is not the same as one that takes a nibble, or even a big bite, out of it.” Travelers Indem. Co. of Connecticut v. Richard McKenzie & Sons, Inc., No. 18-13172, 2021 WL 3777537, at \*8 (11th Cir. Aug. 26, 2021). “A provision in an insurance policy that negates the very coverage that the policy purports to provide in the

circumstances where the person is liable is void as against public policy.” Liberty Mut. Ins. Co. v. Tabor, 553 N.E.2d 909, 912 (Mass. 1990) (a car insurance policy that does not cover negligent acts of a driver nullifies coverage in the exact situation where the driver-insured would be liable.).

48. The reason for the Dive Shop to have professional liability insurance coverage in the first place is for protection should an instructor breach the standard of care or cause injury to those they are instructing.

49. While the coverage alleges to exist for “any negligent act, error or omission in the rendering of or failure to render Professional Services by an Insured” the exclusions within the policy itself ensure that any such negligence won’t be afforded coverage.

50. However, in this instance, any breach in the standard of care set forth by PADI® nullifies coverage according to numerous exclusions within the policy.

51. Plaintiffs could not be expected to understand based on the ambiguity within the language used within the various exclusions that failure to follow any one of the innumerable PADI® standards or procedures could effectively negate coverage for an accident.

52. Insurance is a means to protect oneself from liability when a breach of the standard of care occurs. To fail to provide insurance based upon a breach of a standard of care runs counter to the essence of what an insurance policy provides to the insured when it purports to offer coverage for “any negligent act, error or omission...”

53. The Policy's Exclusions referencing the various standards as "those specifically approved and sanctioned by the certification organization..." or "developed by and approved by the certification organization" is ambiguous and should be read in favor of the insured as providing coverage under the policy because to read otherwise would create an illusory policy.

54. Plaintiffs reasonably believed that their Dive Policy would cover claims associated with diving and running a scuba diving business. Thus, a Dive Shop Policy with forty-one (41) exceptions is illusory as it affords little to no benefit to Plaintiffs for the payment of their insurance premiums.

55. The interpretation of insurance policy language is a question of law for courts to decide. Colony Ins. Co. v. Dover Indoor Climbing Gym, 974 A.2d 399, 401 (N.H. 2009).

56. Also buried within the forty-one (41) exclusions of the Policy at No. 31 and 32 are requirements that the Dive Shop obtain liability waivers.

57. Exclusion No. 31 says that for ..."any Event involving instruction"...in which the insured failed to obtain from the student involved ... "fully completed and signed release of liability / assumption of risk agreement naming the insured as a released party".... "developed by or approved by the certification organization through which the training was offered;..."

58. The language within this exclusion is clearly ambiguous because it could be interpreted that such release of liability must be something provided by PADI® and/or that the dive shop would need to get approval from PADI® to use.

59. Yet, the next exclusion, No. 32 says that any claim arising out of “any Event” involving “any diving, snorkel or swimming activities in which the insured failed to obtain from the participant involved in the claim a fully completed and signed release of liability/assumption of risk agreement naming the insured as a released party.”

60. One could argue that nearly all activities of the dive shop include diving, snorkel or swimming activities and as such, is entirely ambiguous as to which activities requires which type of release of liability.

61. Based upon the language, it appears as though “instruction” requires one type of waiver and “diving” requires a different waiver.

62. This is the exact type of ambiguity that must not be permitted by an insurer within its insurance policies.

63. “Although an insurer has a right to contractually limit the extent of its liability, it must do so ‘through clear and unambiguous policy language.’” Colony, 974 A.2d 399, 401 (N.H. 2009) (quoting Curtis, 566 A.2d 176, 176 (N.H. 1989)).

64. In New Hampshire, the burden of proving that no insurance coverage exists rests squarely with the insurer. N.H. Rev. Stat. Ann. § 491:22-a; see Curtis v. Guar. Tr. Life Ins. Co., 566 A.2d 176, 178 (N.H. 1989). “The court will honor the reasonable expectations of the policyholder’ in determining the amount of coverage” when reviewing an insurance policy as a whole. Id. at 179 (quoting Andrews v. Nationwide Mut. Ins. Co., 124 N.H. 148, 153 (1983)).

65. If an ambiguous policy provision has two meanings, and one favors the policyholder, “the ambiguity will be construed against the insurer.” Colony, 974 A.2d

399, 401 (N.H. 2009); see also Laconia Rod & Gun Club v. Hartford Acc. and Indem. Co., 459 A.2d 249, 251 (N.H. 1983) (insurance policy was ambiguous in how the phrase “in the business of” applied to a gun club that served alcohol.). The reasonable expectations of the insured are considered when the policy is ambiguous. Id.

66. In addition to the ambiguity contained within the clauses requiring releases of liability, the fact that the policy is seeking to exclude coverage for failure to obtain releases of liability is yet another example of the illusory nature of this policy. The policy purports to provide coverage for professional liability but buried within the policy at page 69 is a carve-out for the insurer to avoid having to provide any coverage whatsoever. This exclusion should be void as against public policy.

67. If an exclusion within an insurance policy is “complete nonsense,” then the policy becomes illusory. Lincoln Nat’l Health & Cas. Ins. Co. v. Brown, 782 F.Supp. 110, 112–13 (M.D.Ga.1992); see also, Lineberry v. State Farm Fire & Cas. Co., 885 F. Supp. 1095, 1099 (M.D. Tenn. 1995) (coverage for invasion of the right of privacy, but exclusion for intentional torts provides illusory coverage.).

68. Reasonable expectations of insurance coverage can also be implicated based off an insurance agent’s manifestations to the policy holder. Trefethen v. New Hampshire Ins. Group, 645 A.2d 72 (N.H. 1994). When a store owner said he wanted to be covered “for everything” the agent responded that coverage would be provided. Id. at 73. The plaintiffs’ reasonable expectations of coverage were upheld based on his prior dealings with the insurance agent despite clear and unambiguous policy language. Id. at 715.

69. Here, Defendant Hiscox's underwriting agent Peter Meyer of FirstDive/Owl e-mailed Instructor Oxendine on August 12, 2021 notifying him that coverage for his 2021-2022 policy had been cancelled effective as of September 11, 2021. The Cianchette incident was the reason why insurance was being terminated, but in bold at the bottom of the e-mail it read, **[t]his cancellation does not affect any obligation of underwriters to respond to the Cianchette matter, nor any other ongoing claim(s), which have been, or may be, reported under the policy, as per policy terms and conditions.** (*See Exhibit 2.*)

70. Plaintiffs reasonably believed based on this language by insurance agent Peter Meyer that his insurance company would be accepting defense and indemnity for the "Cianchette matter" despite his policy being terminated. Plaintiffs read this statement to mean that even though they would not provide coverage in the future, the Defendant Hiscox as lead insurer was providing coverage under his policy with respect to the claim.

71. At the time that Plaintiff Oxendine received this email on August 12, 2021, Plaintiffs still had not heard from the insurance company regarding the notice of claim sent on June 23, 2021.

72. It was not until a month later on September 16, 2021, that the Reservation of Rights letter was sent to Plaintiffs.

### **CONCLUSION**

73. Accordingly, coverage is available – and is not otherwise excluded – under the Policy, Defendant Hiscox's denial of coverage is wrongful, and Defendant Hiscox

must provide defense and indemnity to Plaintiffs in connection with any lawsuit brought by Defendant Tirey, in connection with the incident on August 30, 2020.

WHEREFORE, the Plaintiff, PS Dive Shop, LLC d/b/a Portsmouth Scuba, respectfully requests that this Honorable Court:

- A. Declare that Hiscox Dedicated Corporate Member, Ltd. is obligated to provide coverage under the Policy for any suit brought against the Plaintiffs in connection with the accident involving Ms. Cianchette that occurred on August 30, 2020;
- B. Award Defendants PS Dive Shop, LLC d/b/a Portsmouth Scuba and Charles Oxendine their reasonable attorney's fees and costs incurred herein pursuant to RSA 491:22-a; and
- C. Grant such further relief as its just and proper.

Respectfully submitted,

PS DIVE SHOP, LLC D/B/A PORTSMOUTH  
SCUBA and  
CHARLES OXENDINE

By their attorneys:

WADLEIGH, STARR & PETERS, PLLC

Dated: October 7, 2021

By: /s/ Tierney M. Chadwick  
Tierney M. Chadwick, NH Bar # 21010  
Gretchen M. Wade, NH Bar #273726  
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## **EXHIBIT 1**



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

**CORONAVIRUS EXCLUSION**

**Your** Insurance Policy does not / This Insurance does not cover any claim in any way caused by or resulting from:

- a) Coronavirus disease (COVID-19);
- b) Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);
- c) any mutation or variation of SARS-CoV-2;
- d) any fear or threat of a), b) or c) above.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Date Issued: 2020-07-15



## Dive Facility Insurance

Effectuated with certain Lloyd's Underwriters (hereinafter called the "Insurer") through  
**OWL UNDERWRITING AGENCY INC.**

### Policy Declarations

The insurance contract consists of these Declarations pages as well as all coverage wordings, riders or endorsements that are attached hereto.

Insurance is provided only for those coverages for which a specific Limit of Insurance is shown – on terms and conditions contained in the forms indicated.

<b>UMR:</b> B0180MA1903105	<b>Agency Code</b> APSCUBA001
<b>Agency:</b> Assured Partners SCUBA 840 Crescent Centre Dr Suite #300, Franklin, TN 37067	
<b>New</b> <input type="checkbox"/>	<b>Renewal</b> <input checked="" type="checkbox"/>
<b>Named Insured</b> PS Dive Shop, LLC DBA Portsmouth Scuba	<b>Policy Number</b> FD001261
<b>Mailing Address</b> 49 Tirrell Rd Bedford, NH 03110	<b>Effective Date</b> 2020-07-18 <b>Expiry Date</b> 2021-07-18
<b>Location of Risk</b> 915 Sagamore Ave Portsmouth, NH USA	Beginning and Ending 12:01AM standard time at the mailing address of the insured
<b>Description of Operations</b> Dive Facility including dive cylinder fills, sponsored dive trips, dive related products sold, repaired and rented.	
<b>Endorsement</b> <input type="checkbox"/>	<b>Effective Date of Change:</b>
<b>Description:</b>	

The Insured is requested to read this Declarations Page and if it is not correct, return it immediately to Assured Partners SCUBA for appropriate alteration. All inquiries regarding this Declarations Page should be addressed to the following correspondent: info@scubains.com

### Attached to and Forming Part of the Policy

LSW1135B	Lloyd's Privacy Policy Statement	LMA3100	Sanction Limitation & Exclusion Clause
LSW1001	Several Liability Notice Clause	NMA2918	War and Terrorism Exclusion Clause
CL355	Institute Service of Suit Clause (USA)	CL380	Institute Cyber Attack Exclusion Clause
CL370	Institute Radioactive Contamination, Chemical, Biological, Bio-Chemical and Electromagnetic Weapons Exclusion Clause		
LMA5389	U.S. Terrorism Risk Insurance Act of 2002 as amended – New and Renewal Business Endorsement		
FD-SC0010	Certificate Holders Endorsement		

### Section I

#### Buildings & Personal Property

If coverage is afforded for more than one location, a separate schedule will be provided on page 4 of this document breaking down the covered limits by location.

Forms	Coverages	Limit	Deductible*	Basis of Loss Settlement	Premium
FD-CP0010	Building & Personal Property Coverages Buildings	NOT COVERED	NOT COVERED		NOT COVERED
	Personal Property	\$239,000.00	\$1,000.00		\$1,664.16
	Glass	\$1,000/pane	\$250.00		INCLUDED
	Outdoor Signs	\$10,000.00	\$1,000.00		INCLUDED
	Customers Goods	\$20,000.00	\$1,000.00		INCLUDED
FD-CP1030 FD-CP0725	Causes of Loss – Special Form Wave Action Sublimit Mechanical Breakdown	NOT COVERED NOT COVERED	NOT COVERED NOT COVERED		NOT COVERED NOT COVERED
FD-CP0032 NMA2915	Business Income (Without Extra Expense) Including "Rental Value" Electronic Data Endorsement B	NOT COVERED	NOT COVERED		NOT COVERED INCLUDED
FD-CP0090 FDPX-0009 FD-PX1500	Commercial Property Conditions SJC Mold Exclusion Monitored Alarm Requirement – Conditions Precedent				INCLUDED INCLUDED INCLUDED
				<b>Total</b>	<b>\$1,664.16</b>

\*Coverages listed in Section I are subject to **A SEPARATE DEDUCTIBLE FOR LOSSES RESULTING FROM THE PERIL OF WINDSTORM** which shall read as follows in respect of either Buildings or Contents or Business Income: 5% of insured value subject to a minimum of \$3,500. If more than one location is scheduled, the deductible will apply to each location separately.

In the event that two or more deductibles are showing for a specific coverage, the deductible is agreed to be the higher of either the percentage indicated of the insured value at the location or the minimum deductible amount. Unless otherwise indicated, the co-insurance percentage is agreed at 90%.

**Section II****Commercial General Liability**

Forms	Coverages		Deductible	Limit	Premium
FD-GL0001	Commercial General Liability Coverage Form Each Occurrence Annual Aggregate – Products/Completed Operations General Aggregate Personal & Advertising Injury Premises Medical Payments – Per Person -Per Event Fire Legal Liability – Each Occurrence		NIL	\$2,000,000.00 \$2,000,000.00 \$3,000,000.00 \$2,000,000.00 \$5,000 \$10,000 \$2,000,000.00	\$1,906.78 INCLUDED INCLUDED INCLUDED INCLUDED INCLUDED INCLUDED
FD-GL0419	Hired Auto and Non-Owned Auto Liability		\$1,000	\$1,000,000	INCLUDED
FD-GL2407	Products / Completed Operations Hazard Redefined				INCLUDED
FD-LX0011	Exclusion - Designated Professional Services				INCLUDED
FD-LX0012	Absolute Auto, Aircraft & Watercraft Exclusion				INCLUDED
FD-LX0001	Immune Deficiency Exclusion				INCLUDED
FD-LX1560	Punitive or Exemplary Damages Exclusion				INCLUDED
FD-LX1590	Diving Boards – Exclusion				INCLUDED
FD-LX1650	Assault & Battery Exclusion				INCLUDED
FD-LX2101	Athletic Sports Participants Exclusion				INCLUDED
FD-LX0009	SJC Mold Exclusion				INCLUDED
				<b>Total</b>	\$1,906.78

**Section III****Crime**

Forms	Coverages		Deductible	Limit	Premium
FD-CR1000	Crime General Provisions				
FD-CR1500	Employee Dishonesty		\$500	\$5,000	INCL.
FD-CR2000	Outside Robbery (Hold-Up)		\$500	\$1,000	INCL.
	Inside Robbery (Hold-Up)		\$500	\$1,000	INCL.

**Section IV****Underwater Liability**

Forms	Coverages	Deductible	Limit	Premium
FD-UW0001	Underwater Instructors Professional Liability - CLAIMS MADE COVERAGE. Retroactive Date: 2019-07-18			
	Per Claim Limit Annual Aggregate including Defense Expenses	NIL	\$2,000,000.00 \$3,000,000.00	\$1,900.00
FD-UW0002	Technical Endorsement A	NIL	NOT COVERED	NOT COVERED
FD-UW0003	Technical Endorsement B	NIL	NOT COVERED	NOT COVERED
	Applies to Diving Instruction and Supervision only as approved and sanctioned by the training agencies listed on the Schedule of Dive Staff and subject to the terms, limits and conditions of this policy. 90 Day Discovery Period Applies			
<b>Schedule of Covered Dive Staff Attached</b>				
			<b>Total</b>	\$1,900.00

**Section V****Dive Travel E&O**

Forms	Coverages	Deductible	Limit	Premium
FD-DT0001	Dive Travel Organizer Professional Liability – CLAIMS MADE COVERAGE. Retroactive Date:			
	Per Claim Limit Annual Aggregate	NOT COVERED	NOT COVERED	NOT COVERED
	90 Day Discovery Period			

**Loss Payable:**

<b>Premium</b>	\$5,470.94
<b>+ Policy Fee</b>	\$200.00
<b>State/Provincial Taxes</b>	
NH state tax	\$170.13
<b>Total Premium</b>	\$5,841.07
<b>Broker Commission</b>	15%
Minimum Retained Premium – 25%	

In consideration of the premium specified and the statements contained in the Policy Declarations and subject to all the terms and conditions of this Policy and Schedules and Endorsements attached thereto, the insurer agrees to insure the Named Insured, subject to the applicable limits of Insurance or amounts or insurance contained herein, for the specified term.

In the event of claim, please notify the following: Assured Partners SCUBA at info@scubains.com or 615-251-7941

**PER:****DATE ISSUED:** 2020-07-15



## **SCHEDULE OF DIVE STAFF**

Dive Staff must be in active status with their Dive Training Agency(s) for coverage to apply

Name	Training Agency	Certification Number
Chad Law	PADI	374406
Dick Scott	PADI	421422
Stephen Faria	PADI	400476
Charles Oxendine	PADI	287587
Jen Minuti	PADI	450674
Stan Simmons	PADI	080450
Daniel Bolduc	PADI	176580

**"The company issuing this policy has not been licensed by the state of New Hampshire and the rates charged have not been approved by the commissioner of insurance. If the company issuing this policy becomes insolvent, the New Hampshire insurance guaranty fund shall not be liable for any claims made against the policy."**

**SCHEDULE OF INSURERS**

In respect of: Section III (a) + (b): G – Gen Liab

Effected with:

48.7460%	Lloyd's Syndicate HIS 0033
7.3858%	Lloyd's Syndicate AES 1225
18.0180%	Lloyd's Syndicate AUL 1274
25.8502%	Lloyd's Syndicate SCC 1301
100%	Total placed heron, in respect of the above order

In respect of: Section II: 6T – TRIA

Effected with:

48.7460%	Lloyd's Syndicate HIS 0033
7.3858%	Lloyd's Syndicate AES 1225
18.0180%	Lloyd's Syndicate AUL 1274
25.8502%	Lloyd's Syndicate SCC 1301
100%	Total placed heron, in respect of the above order

In respect of: Section II: B3 – Comm Prop (USA)

Effected with:

48.7460%	Lloyd's Syndicate HIS 0033
7.3858%	Lloyd's Syndicate AES 1225
18.0180%	Lloyd's Syndicate AUL 1274
25.8502%	Lloyd's Syndicate SCC 1301
100%	Total placed heron, in respect of the above order

In respect of: Section III (c): GC – Prof Liab

Effected with:

48.7460%	Lloyd's Syndicate HIS 0033
7.3858%	Lloyd's Syndicate AES 1225
18.0180%	Lloyd's Syndicate AUL 1274
25.8502%	Lloyd's Syndicate SCC 1301
100%	Total placed heron, in respect of the above order



## LLOYD'S PRIVACY POLICY STATEMENT

### UNDERWRITERS AT LLOYD'S, LONDON

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The Certain Underwriters at Lloyd's, London want you to know how we protect the confidentiality of your non--public personal information. We want you to know how and why we use and disclose the information that we have about you. The following describes our policies and practices for securing the privacy of our current and former customers.

### INFORMATION WE COLLECT

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The non-public personal information that we collect about you includes, but is not limited to:

- Information contained in applications or other forms that you submit to us, such as name, address, and social security number
- Information about your transactions with our affiliates or other third-parties, such as balances and payment history
- Information we receive from a consumer-reporting agency, such as credit-worthiness or credit history

### INFORMATION WE DISCLOSE

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We disclose the information that we have when it is necessary to provide our products and services. We may also disclose information when the law requires or permits us to do so.

### CONFIDENTIALITY AND SECURITY

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Only our employees and others who need the information to service your account have access to your personal information. We have measures in place to secure our paper files and computer systems.

### RIGHT TO ACCESS OR CORRECT YOUR PERSONAL INFORMATION

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You have a right to request access to or correction of your personal information that is in our possession.

### CONTACTING US

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If you have any questions about this privacy notice or would like to learn more about how we protect your privacy, please contact the agent or broker who handled this insurance. We can provide a more detailed statement of our privacy practices upon request.

Date Issued: 2020-07-15



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

**SANCTION LIMITATION AND EXCLUSION CLAUSE**

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment or such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanction, laws or regulations of the European Union, United Kingdom or United States of America.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Date Issued: 2020-07-15



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Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

**SEVERAL LIABILITY NOTICE / CLAUSE**

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Date Issued: 2020-07-15



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

**WAR AND TERRORISM EXCLUSION CLAUSE**

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

1. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
2. any act of terrorism.

For the purpose of this endorsement an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to 1. and/or 2. above.

If the Insurers allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Insured.

In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

Date Issued: 2020-07-15



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Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

**SERVICE OF SUIT CLAUSE (U.S.A.)**

It is agreed that in the event of the failure of the Underwriters severally subscribing this insurance (the underwriters) to pay any amount claimed to be due hereunder, the Underwriters, at the request of the Assured, will submit to the jurisdiction of a court of competent jurisdiction within the United States of America

Notwithstanding any provision elsewhere in this insurance relating to jurisdiction, it is agreed that the Underwriters have the right to commence an action in any court of competent jurisdiction in the United States of America, and nothing in this clause constitutes or should be understood to constitute a waiver of the Underwriters' rights to remove an action to a United States Federal District Court or to seek remand therefrom or to seek a transfer of any suit to any other court of competent jurisdiction as permitted by the laws of the United States of America or any state therein.

Subject to the Underwriters' rights set forth above:

- a) It is further agreed that the Assured may serve process upon any senior partner in the firm of:

Lloyd's America, Inc. Attention: Legal Department, 280 Park Avenue, East Tower, 25<sup>th</sup> Floor, New York, NY 10017

And that in any suit instituted against any one of them upon this contract the Underwriters will abide by the final decision of the Court or of any Appellate Court in the event of an appeal.

- b) The above-named are authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of the Assured to give a written undertaking to the Assured that they will enter a general appearance upon the Underwriters' behalf in the event such a suit shall be instituted.
- c) The right of the Assured to bring suit as provided herein shall be limited to a suit brought in its own name and for its own account. For the purpose of suit as herein provided the word Assured includes any mortgagee under a ship mortgage which is specifically named as a loss payee in this insurance and any person succeeding to the rights of any such mortgagee.
- d) Further, pursuant to any statute or any state, territory or district of the United States of America which makes provision therefor, Underwriters hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office (the Officer), as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Assured or any beneficiary hereunder arising out of this contract of insurance, and hereby designate the above-named as the person to whom the Officer is authorized to mail such process or a true copy thereof.

If this clause is attached to a contract of reinsurance the terms of insurance and Assured shall mean reinsurance and Reassured respectively.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**



**THIS ENDORSEMENT CHANGES THE POLICY.  
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Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

**INSTITUTE CYBER ATTACK EXCLUSION CLAUSE**

1.1 Subject only to clause 1.2 below, in no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from the use or operations, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.

1.2 Where this clause is endorsed on policies covering risks of war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or terrorism or any persona acting from a political motive, Clause 1.1 shall not operate to exclude losses (which would otherwise be covered) arising from the use of any computer, computer system or computer software programme or any other electronic system in the launch and/or guidance system and / or firing mechanism of any weapon or missile.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

Date Issued: 2020-07-15



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

**INSTITUTE RADIOACTIVE CONTAMINATION, CHEMICAL, BIOLOGICAL, BIOCHEMICAL  
AND ELECTROMAGNETIC WEAPONS EXCLUSION CLAUSE**

This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith

1. In no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from

1.1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel

1.2 the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof

1.3 any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter

1.4 the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes

1.5 any chemical, biological, bio-chemical, or electromagnetic weapon.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

Date Issued: 2020-07-15



**THIS ENDORSEMENT CHANGES THE POLICY.  
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Policy No.: FD001261  
Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

**U.S. TERRORISM RISK INSURANCE ACT OF 2002 AS AMENDED**

**NEW & RENEWAL BUSINESS ENDORSEMENT**

This Endorsement is issued in accordance with the terms and conditions of the "U.S. Terrorism Risk Insurance Act of 2002" as summarized in the disclosure notice.

In consideration of an additional premium of US\$ \_\_\_\_\_ INCLUDED \_\_\_\_\_ paid, it is hereby noted and agreed with effect from inception that the Terrorism exclusion to which this Insurance is subject, shall not apply to any "insured loss" directly resulting from any "act of terrorism" as defined in the "U.S. Terrorism Risk Insurance Act of 2002", as amended ("TRIA").

The coverage afforded by this Endorsement is only in respect of any "insured loss" of the type insured by this Insurance directly resulting from an "act of terrorism" as defined in TRIA. The coverage provided by this Endorsement shall expire at 12:00 midnight December 31, 2027, the date on which the TRIA Program is scheduled to terminate, or the expiry date of the policy whichever occurs first, and shall not cover any losses or events which arise after the earlier of these dates. The Terrorism exclusion, to which this Insurance is subject, applies in full force and effect to any other losses and any act or events that are not included in said definition of "act of terrorism".

This Endorsement only affects the Terrorism exclusion to which this Insurance is subject. All other terms, conditions, insured coverage and exclusions of this Insurance including applicable limits and deductibles remain unchanged and apply in full force and effect to the coverage provided by this Insurance.

Furthermore the Underwriter(s) will not be liable for any amounts for which they are not responsible under the terms of TRIA (including subsequent action of Congress pursuant to the Act) due to the application of any clause which results in a cap on the Underwriter's liability for payment for terrorism losses.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

Date Issued: 2020-07-15



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

### **CERTIFICATE HOLDER ENDORSEMENT**

It's hereby noted and agreed that any entity to which a Certificate of Insurance has been issued under this policy is also an Additional Insured. The additional insured protection is strictly limited in scope and applies only to the liability of these Entities arising vicariously out of or attributable to the operations of the **Named Insured** to which this policy applies.

This Endorsement does not extend coverage to any Entity for liability attributable to or allegations made against said Entity for his/her/its own conduct.

This Endorsement and the coverage provided herein is subject to all of the terms, provisions, agreements, definitions, exclusions, limitations, conditions, and warranties contained in the Policy to which it is attached.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

Date Issued: 2020-07-15



## BUILDING AND PERSONAL PROPERTY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us", and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to SECTION H - DEFINITIONS.

### A. COVERAGE

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

#### 1. Covered Property.

Covered Property, as used in this Coverage Part, means the following types of property for which a Limit of Insurance is shown in the Declarations:

- a. **Building**, meaning the building or structure described in the Declarations, including:
  - (1) Completed additions;
  - (2) Permanently installed;
    - (a) Fixtures;
    - (b) Machinery; and
    - (c) Equipment;
  - (3) Outdoor fixtures;
  - (4) Personal property owned by you that is used to maintain or service the building or structure or its premises, including:
    - (a) Fire extinguishing equipment;
    - (b) Outdoor furniture;
    - (c) Floor coverings; and
    - (d) Appliances used for refrigerating, ventilating, cooking, dishwashing, or laundering;
  - (5) If not covered by other insurance:
    - (a) Additions under construction, alteration and repairs to the building or structure;
    - (b) Materials, equipment, supplies, and temporary structures, on or within 100 feet of the described premises, used for making additions, alterations or repairs to the building or structure.
- b. **Your Business Personal Property** located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises, consisting of the following unless otherwise specified in the Declarations or on the Your Business Personal Property - Separation of Coverage form:
  - (1) Furniture and fixtures;
  - (2) Machinery and equipment;
  - (3) "Stock";
  - (4) All other personal property owned by you and used in your business;
  - (5) Labor, materials or services furnished or arranged by you on personal property of others;
  - (6) Your use interest as tenant in improvements and betterments. Improvements and betterments are fixtures, alterations, installations or additions:
    - (a) Made a part of the building or structure you occupy but do not own; and
    - (b) You acquired or made at your expense but cannot legally remove;
  - (7) Leased personal property for which you have a contractual responsibility to insure, unless otherwise provided for under Personal Property of Others.
- c. **Personal Property of Others** that is:
  - (1) In your care, custody, or control; and,
  - (2) Located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises.

However, our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

#### 2. Property Not Covered .

Covered Property does not include:

- a. Accounts, bills, currency, deeds, food stamps or other evidences of debt, money, notes or securities. Lottery tickets held for sale are not securities;
- b. Animals, unless owned by others and boarded by you, or if owned by you, only as "stock" while inside of buildings;
- c. Automobiles held for sale;
- d. Bridges, roadways, walks, patios or other paved surfaces;
- e. Contraband, or property in the course of illegal transportation or trade;
- f. The cost of excavations, grading, backfilling or filling;
- g. Foundations of buildings, structures, machinery or boilers if their foundations are below:
  - (1) The lowest basement floor; or
  - (2) The surface of the ground, if there is no basement;
- h. Land (Including land on which the property is located), water, growing crops or lawns;
- i. Personal Property while airborne or waterborne;
- j. Pilings, piers, wharves or docks;
- k. Property that is covered under another coverage form of this or any other policy in which it is more specifically described, except for the excess of the amount due (whether you can collect on it or not) from that other insurance;
- l. Retaining walls that are not part of the building described in the Declarations;
- m. Underground pipes, flues or drains;
- n. The cost to research, replace or restore the information on valuable papers and records, including those which exist on electronic or magnetic media, except as provided in the Coverage Extensions;
- o. Vehicles or self-propelled machines (including aircraft or watercraft) that:
  - (1) Are licensed for use on public roads; or
  - (2) Are operated principally away from the described premises.

This paragraph does not apply to:

- (a) Vehicles or self-propelled machines or autos you manufacture, process or warehouse;
- (b) Vehicles or self-propelled machines, other than autos, you hold for sale; or
- (c) Rowboats or canoes out of water at the described premises;
- p. The following property while outside of buildings:
  - (1) Grain, hay, straw or other crops;
  - (2) Fences, radio or television antennas, including their lead-in wiring, masts or towers, signs (other than signs attached to buildings), trees, shrubs or plants (other than "stock" of trees, shrubs or plants), all except as provided in the Coverage Extensions.

### 3. Covered Causes of Loss.

See applicable Causes of Loss Form as shown in the Declarations.

### 4. Additional Coverages.

#### a. Debris Removal.

- (1) We will pay your expense to remove debris of Covered Property caused by or resulting from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.
- (2) The most we will pay under this Additional Coverage is 25% of:
  - (a) The amount we pay for the direct physical loss of or damage to Covered Property; plus
  - (b) The deductible in this policy applicable to that loss or damage.

But this limitation does not apply to any additional debris removal limit provided in the Limits of Insurance section.

- (3) This Additional Coverage does not apply to costs to:
  - (a) Extract "pollutants" from land or water; or
  - (b) Remove, restore or replace polluted land or water.

#### b. Preservation of Property.

If it is necessary to move Covered Property from the described premises to preserve it from loss or damage by a Covered Cause of Loss, we will pay for any direct physical loss or damage to that property.

- (1) While it is being moved or while temporarily stored at another location; and
- (2) Only if the loss or damage occurs within 10 days after the property is first moved.

#### c. Fire Department Service Charge.

When the fire department is called to save or protect Covered Loss, we will pay up to \$1,000 for your liability for fire department service charges:

- (1) Assumed by contract or agreement prior to loss; or
- (2) Required by local ordinance.

No Deductible applies to this Additional Coverage.

#### d. Pollutant Clean Up and Removal.

We will pay your expense to extract "pollutants" from land or water at the described premises if the discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 60 days of the date on which the Covered Cause of Loss occurs.

This Additional Coverage does not apply to costs to test for, monitor or assess the existence, concentration or effects of "pollutants". But we will pay for testing which is performed in the course of extracting the "pollutants" from the land or water.

The most we will pay under this Additional Coverage for each described premises is \$10,000 for the sum of all covered expenses arising out of Covered Causes of Loss occurring during each separate 12 month period of this policy.

## 5. Coverage Extensions.

Except as otherwise provided, the following Extensions apply to property located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises.

If a Coinsurance percentage of 80% or more or, a Value Reporting period symbol, is shown in the Declarations, you may extend the insurance provided by this Coverage Part as follows:

### a. Newly Acquired or Constructed Property.

- (1) You may extend the insurance that applies to Building to apply to:
  - (a) Your new buildings while being built on the described premises; and
  - (b) Buildings you acquire at locations, other than the described premises, intended for:
    - (i) Similar use as the building described in the Declarations: or
    - (ii) Use as a warehouse.

The most we will pay for loss or damage under this Extension is 25% of the Limit of Insurance for Building shown in the Declarations, but not more than \$250,000 at each building.

- (2) You may extend the insurance that applies to Your Business Personal Property to apply to that property at any location you acquire other than at fairs or exhibitions.

The most we will pay for loss or damage under this Extension is 10% of the Limit of Insurance for Your Business Personal Property shown in the Declarations, but not more than \$100,000 at each building.

- (3) Insurance under this Extension for each newly acquired or constructed property will end when any of the following first occurs:
  - (a) this policy expires.
  - (b) 30 days expire after you acquire or begin to construct the property; or
  - (c) You report values to us.

We will charge you additional premium for values reported from the date construction begins or you acquire the property.

### b. Personal Effects and Property of Others.

You may extend the insurance that applies to Your Business Personal Property to apply to:

- (1) Personal effects owned by you, your officers, your partners or your employees. This extension does not apply to loss or damage by theft.
- (2) Personal property of others in your care, custody or control.

The most we will pay for loss or damage under this Extension is \$2,500 at each described premises. Our payment for loss or damage to personal property of others will only be for the account of the owner of the property.

### c. Valuable Papers and Records - Cost of Research.

You may extend the insurance that applies to Your Business Personal Property to apply to your costs to research, replace or restore the lost information on lost or damaged valuable papers and records, including those which exist on electronic or magnetic media, for which duplicates do not exist. The most we will pay under this Extension is \$1,000 at each described premises.

### d. Property Off-Premises.

You may extend the insurance provided by this Coverage Form to apply to your Covered Property, other than "stock", that is temporarily at a location you do not own, lease or operate. This Extension does not apply to Covered Property:

- (1) In or on a vehicle;
- (2) In the care, custody or control of your salespersons; or
- (3) At any fair or exhibition.

The most we will pay for loss or damage under this Extension is \$5,000.

### e. Outdoor Property.

You may extend the insurance provided by this Coverage Form to apply to your outdoor fences, radio and television antennas, signs (other than signs attached to buildings), trees, shrub and plants (other than "stock" of trees, shrubs or plants), including debris removal expense, caused by or resulting from any of the following causes of loss if they are Covered Causes of Loss:

- (1) Fire;
- (2) Lightning;
- (3) Explosion;
- (4) Riot or Civil Commotion; or
- (5) Aircraft.

The most we will pay for loss or damage under this Extension is \$1,000, but not more than \$250 for any one tree, shrub or plant.

Each of these Extensions is additional insurance. The Additional Condition, Coinsurance, does not apply to these Extensions.

## B. EXCLUSIONS

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See applicable Causes of Loss Form as shown in the Declarations.

## C. LIMITS OF INSURANCE

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The most we will pay for loss or damage in any one occurrence is the applicable Limit of Insurance shown in the Declarations.

The most we will pay for loss or damage to outdoor signs attached to buildings is \$1,000 per sign in any one occurrence unless another limit is indicated in the Declarations.

The limits applicable to the Coverage Extensions and the Fire Department Service Charge and Pollutant Clean Up and Removal Additional Coverages are in addition to the Limits of Insurance.

Payments under the following Additional Coverages will not increase the applicable Limit of Insurance:

1. Preservation of Property; or
  2. Debris Removal; but if
    - a. The sum of direct physical loss or damage and debris removal expense exceeds the Limit of Insurance; or
    - b. The debris removal expense exceeds the amount payable under the 25% limitation in the Debris Removal Additional Coverage;
- We will pay up to an additional \$5,000 for each location in any one occurrence under the Debris Removal Additional Coverage.

## D. DEDUCTIBLE

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We will not pay for loss or damages in any one occurrence until the amount of loss or damage exceeds the Deductible shown in the Declarations. We will then pay the amount of loss or damage in excess of the Deductible, up to the applicable Limit of Insurance, after any deduction required by the Coinsurance condition or the Agreed Value Optional Coverage.

## E. LOSS CONDITIONS

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The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

### 1. Abandonment

There can be no abandonment of any property to us.

### 2. Appraisal.

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

### 3. Duties In The Event Of Loss Or Damage.

- a. You must see that the following are done in the event of loss or damage to Covered Property:
  - (1) Notify the police if a law may have been broken.
  - (2) Give us prompt notice of the loss or damage. Include a description of the property involved.
  - (3) As soon as possible, give us a description of how, when and where the loss or damage occurred.
  - (4) Take all reasonable steps to protect the Covered Property from further damage by a Covered Cause of Loss. If feasible, set the damaged property aside and in the best possible order for examination. Also keep a record of your expenses for emergency and temporary repairs, for consideration in the settlement of this claim. This will not increase the Limit of Insurance.
  - (5) At our request, give us complete inventories of the damaged and damaged property. Include quantities, costs, values and amount of loss claimed.
  - (6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records. Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.
  - (7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
  - (8) Cooperate with us in the investigation or settlement of the claim.
- b. We may examine any insured under oath, while not in the presence of any other insured and at times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

**4. Loss Payment.**

- a. In the event of loss or damage covered by this Coverage Form, at our option, we will either:
  - (1) Pay the value of lost or damaged property;
  - (2) Pay the cost of repairing or replacing the lost or damaged property;
  - (3) Take all or any part of the property at an agreed or appraised value; or
  - (4) Repair, rebuild, or replace the property with other property of like kind and quality.
- b. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.
- c. We will not pay you more than your financial interest in the Covered Property.
- d. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.
- e. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
- f. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, if:
  - (1) You have complied with all of the terms of this Coverage Part; and
  - (2)
    - (a) We have reached agreement with you on the amount of loss; or
    - (b) An appraisal award has been made.

**5. Recovered Property.**

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

**6. Vacancy.**

If the building where loss or damage occurs has been vacant for more than 60 consecutive days before that loss or damage, we will:

- a. Not pay for any loss or damage caused by any of the following even if they are Covered Causes to Losses.
  - (1) Vandalism;
  - (2) Sprinkler leakage, unless you have protected the system against freezing;
  - (3) Building glass breakage;
  - (4) Water damage;
  - (5) Theft; or
  - (6) Attempted theft.
- b. Reduce the amount we would otherwise pay for the loss or damage by 15%.

A building is vacant when it does not contain enough business personal property to conduct customary operations.

Buildings under construction are not considered vacant

**7. Valuation.**

We will determine the value of Covered Property in the event of loss or damage as follows:

- a. At actual cash value at the time of loss or damage, except as provided in b., c., d., e. and f. below
- b. If the Limit of Insurance for Building satisfies the Additional Condition, Coinsurance, and the cost to repair or replace the damaged building property is \$2,500 or less, we will pay the cost of building repairs or replacement.  
This provision does not apply to the following even when attached to the building:
  - (1) Vandalism;
  - (2) Awnings or floor coverings;
  - (3) Appliances for refrigerating, ventilating, cooking, dishwashing, or laundering; or
  - (4) Outdoor equipment or furniture.
- c. "Stock" you have sold but not delivered at the selling price less discounts and expenses you otherwise would have had.
- d. Glass at the cost of replacement with safety glazing material if required by law.
- e. Tenant's Improvements and Betterments at:
  - (1) Actual cash value of the lost or damaged property if you make repairs promptly.
  - (2) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:
    - (a) Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and
    - (b) Divide the amount determined in (a) above by the number of days from the installation of improvements to the expiration of the lease. If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.
  - (3) Nothing if others pay for repairs or replacement.
- f. Valuable Papers and Records, including those which exist on electronic or magnetic media (other than prepackaged software programs), at the cost of:
  - (1) Blank materials for reproducing the records; and
  - (2) Labor to transcribe or copy the records when there is a duplicate.

## F. ADDITIONAL CONDITIONS

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

### 1. Coinsurance.

If a Coinsurance percentage is shown in the Declarations, the following conditions apply.

- a. We will not pay the full amount of any loss if the value of Covered Property at the time of loss times the Coinsurance percentage shown for it in the Declarations is greater than the Limit of Insurance for the property.

Instead, we will determine the most we will pay using the following steps:

- (1) Multiply the value of Covered Property at the time of loss by the Coinsurance percentage;
- (2) Divide the Limit of Insurance of the property by the figure determined in step (1);
- (3) Multiply the total amount of loss, before the application of any deductible, by the figure determined in step (2); and
- (4) Subtract the deductible from the figure determined in step (3)

We will pay the amount determined in step (4) or the limit of insurance, whichever is less. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

#### Example No.1 (Underinsurance):

When:

The value of the property is	\$250,000
The Coinsurance Percentage for it is	80%
The Limit of Insurance for it is	\$100,000
The Deductible is	\$250
The amount of loss is	\$40,000

Step (1):  $\$250,000 \times 80\% = \$200,000$  (the minimum amount of insurance to meet your Coinsurance requirements)

Step (2):  $\$100,000 / \$200,000 = .50$

Step (3):  $\$40,000 \times .50 = \$20,000$

Step (4):  $\$20,000 - \$250 = \$19,750$

We will pay no more than \$19,750. The remaining \$20,250 is not covered.

#### Example No. 2 (Adequate Insurance):

When:

The value of the property is	\$250,000
The Coinsurance Percentage for it is	80%
The Limit of Insurance for it is	\$200,000
The Deductible is	\$250
The amount of loss is	\$40,000

Step (1):  $\$250,000 \times 80\% = \$200,000$  (the minimum amount of insurance to meet your Coinsurance requirements)

Step (2):  $\$200,000 / \$200,000 = 1.00$

Step (3):  $\$40,000 \times 1.00 = \$40,000$

Step (4):  $\$40,000 - \$250 = \$39,750$

We will cover the \$39,750 loss in excess of the Deductible. No penalty applies.

If one Limit of Insurance applies to two or more separate items, this condition will apply to the total of all property to which the limit applies.

#### Example No. 3:

When:

The value of the property is	Building at Location 1:	\$ 75,000
	Building at Location 2:	\$100,000
	Personal Property at Location 2:	\$ 75,000
The Coinsurance Percentage for it is		90%
The Limit of Insurance for Building and		
Personal Property at Location Nos. 1 and 2 is:		
		\$180,000
The Deductible is		\$1,000
The amount of loss is	Building at Location No. 2:	\$ 30,000
	Personal Property at Location No. 2:	\$ 20,000

Step (1):  $\$250,000 \times 90\% = \$225,000$  (the minimum amount of insurance to meet your Coinsurance requirements and to avoid the penalty below)

Step (2):  $\$180,000 / \$225,000 = .80$

Step (3):  $\$50,000 \times 0.80 = \$40,000$

Step (4):  $\$40,000 - \$1,000 = \$39,000$

We will pay no more than \$39,000. The remaining \$11,000 is not covered.

### 2. Mortgage Holders.

- a. The term "mortgage holder" includes trustee.
- b. We will pay for covered loss of or damage to buildings or structures to each mortgage holder shown in the Declarations in their order of precedence, as interests may appear.
- c. The mortgage holder has the right to receive loss payment even if the mortgage holder has started foreclosure or similar action on the building or structure.
- d. If we deny your claim because of your acts or because you failed to comply with the terms of this Coverage Part, the mortgage holder will still have the right to receive loss payment if the mortgage holder:
  - (1) Pays any premium due under this Coverage Part at our request if you have failed to do so;
  - (2) Submits a signed, sworn statement of loss within 60 days after receiving notice from us of your failure to do so;
  - (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgage holder.

All of the terms in this Coverage Part will then apply directly to the mortgage holder.

- e. If we pay the mortgage holder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:
  - (1) The mortgage holder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
  - (2) The mortgage holder's right to recover the full amount of the holder's claim will not be impaired.

At our option, we may pay to the mortgage holder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

- f. If we cancel this policy, we will give written notice to the mortgage holder at least:
  - (1) 10 days before the effective date of cancellation if we cancel for your non-payment of premium; or
  - (2) 30 days before the effective date of cancellation if we cancel for any other reason.
- g. If we elect not to renew this policy, we will give written notice to the mortgage holder at least 10 days before the expiration date of this policy.

## G. OPTIONAL COVERAGES

If shown in the Declarations, the following Optional Coverages apply separately to each item.

### 1. Agreed Value.

- a. The Additional Condition, Coinsurance, does not apply to Covered Property to which this Optional Coverage applies. We will pay no more for loss of or damage to that property than the proportion that the Limit of Insurance under this Coverage Part for the property bears to the Agreed Value shown for it in the Declarations.
- b. If the expiration date for this Optional Coverage shown in the Declarations is not extended, the Additional Condition, Coinsurance, is restated and this Optional Coverage expires.
- c. The terms of this Optional Coverage apply only to loss or damage that occurs:
  - (1) On or after the effective date of this Optional Coverage; and
  - (2) Before the Agreed Value expiration date shown in the Declarations or the policy expiration date, whichever occurs first.

### 2. Inflation Guard.

- a. The Limit of Insurance for property for which this Optional Coverage applied will automatically increase by the annual percentage shown in the Declarations.
- b. The amount of increase will be:
  - (1) The Limit of Insurance that applied on the most recent of the policy inception date, the policy anniversary date, or any other policy change amending the Limit of Insurance, times
  - (2) The percentage of annual increase shown in the Declarations, expressed as a decimal (example: 8% is .08), times
  - (3) The number of days since the beginning of the current policy year of the most recent policy change amending the Limit of Insurance divided by 365.

Example:

If:

The applicable Limit of Insurance is \$100,000

The annual percentage increase is 8%

The number of days since the beginning of the policy year (or last policy change) is 146

The amount of increase is  $x .08 \times 146 / 365 =$  \$3,200

### 3. Replacement Cost.

- a. Replacement Cost (without deduction for depreciation) replaces Actual Cash Value in the Loss Condition, Valuation, of this Coverage Form.
- b. This Optional Coverage does not apply to:
  - (1) Property of others;
  - (2) Contents of a residence;
  - (3) Manuscripts;
  - (4) Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac; or
  - (5) "Stock" unless the Including "Stock" option is shown in the Declarations.

- c. You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of replacement cost basis. In the event you elect to have loss or damage settled on actual cash value basis, you may still make a claim for the additional coverage this Optional Coverage provides if you notify us of your intent to do so within 180 days after the loss or damage.
- d. We will not pay on a replacement cost basis for any loss or damage:
  - (1) Until the lost or damaged property is actually repaired or replaced; and
  - (2) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.
- e. We will not pay more for loss or damage on a replacement cost basis than the least of:
  - (1) The Limit of Insurance applicable to the lost or damaged property;
  - (2) The cost to replace, on the same premises, the lost or damaged property with other property:
    - (a) Of comparable material and quality; and
    - (b) Used for the same purpose; or
  - (3) The amount you actually spend that is necessary to repair or replace the lost or damaged property.

## H. DEFINITIONS

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- 1. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned, or re-claimed.
- 2. "Stock" means merchandise held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packing or shipping.



## CAUSES OF LOSS – SPECIAL FORM

Words and phrases that appear in quotation marks have special meaning. Refer to Section F - Definitions

### A. COVERED CAUSES OF LOSS

When Special is shown in the Declarations, Covered Causes of Loss means RISKS OF DIRECT PHYSICAL LOSS unless the loss is:

1. Excluded in Section B., Exclusions; or
  2. Limited in Section C., Limitations;
- that follow.

### B. EXCLUSIONS

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

#### a. Ordinance or Law

The enforcement of any ordinance or law:

- (1) Regulating the construction, use or repair of any property; or
- (2) Requiring the tearing down of any property, including the cost of removing its debris.

#### b. Earth Movement

- (1) Any earth movement (other than sinkhole collapse), such as an earthquake, landslide, mine subsidence or earth sinking, rising or shifting. But if loss or damage by fire or explosion results, we will pay for that resulting loss or damage.
- (2) Volcanic eruption, explosion or effusion. But if loss or damage by fire, building glass breakage or volcanic action results, we will pay for that resulting loss or damage.

Volcanic action means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:

- (a) Airborne volcanic blast or airborne shock waves;
- (b) Ash, dust or particulate matter; or
- (c) Lava flow.

All volcanic eruptions that occur within any 168-hour period will constitute a single occurrence.

Volcanic action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss or damage to the described property.

#### c. Government Action

Seizure or destruction of property by order of government authority.

But we will pay for acts of destruction ordered by the government authority and taken at the time of a fire to prevent its spread, if the fire would be covered under this Coverage Part.

#### d. Nuclear Hazard

Nuclear reaction or radiation, or radioactive contamination, however caused.

But if loss or damage by fire results, we will pay for that resulting loss or damage.

#### e. Power Failure

The failure of power or other utility service supplied to the described premises, however caused, if the failure occurs away from the described premises.

But if loss or damage by a Covered Cause of Loss results, we will pay for that resulting loss or damage.

#### f. War and Military Action

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by government authority in hindering or defending against any of these.

**g. Water**

- (1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;
- (2) Mudslide or mudflow;
- (3) Water that backs up from a sewer or drain; or
- (4) Water under the ground surface pressing on, or flowing or seeping through:
  - (a) Foundations, walls, floors or paved surfaces;
  - (b) Basements, whether paved or not; or
  - (c) Doors, windows or other openings.

But if loss or damage by fire, explosion or sprinkler leakage results, we will pay for that resulting loss or damage.

2. We will not pay for loss or damage caused by or resulting from any of the following:

- a. Artificially generated electric current, including electric arcing, that disturbs electrical devices, appliances or wires.

But if loss or damage by fire results, we will pay for that resulting loss or damage.

- b. Delay, loss of use or loss of market.

- c. Smoke, vapor or gas from agricultural smudging or industrial operations

d.

- (1) Wear and tear;
- (2) Rust, corrosion, fungus, decay, deterioration, hidden, or latent defect or any quality in property that causes it to damage or destroy itself;
- (3) Smog;
- (4) Settling, cracking, shrinking or expansion;
- (5) Insects, birds, rodents or other animals;
- (6) Mechanical breakdown, including rupture or bursting caused by centrifugal force; or
- (7) The following causes of loss to personal property:
  - (a) Dampness or dryness of atmosphere;
  - (b) Changes in or extremes of temperature; or
  - (c) Marring or scratching.

But if loss or damage by the "specified causes of loss" or building glass breakage results, we will pay for that resulting loss or damage.

- e. Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. But if loss or damage by fire or combustion explosion results, we will pay for that resulting loss or damage. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.

- f. Continuous or repeated seepage or leakage of water that occurs over a period of 14 days or more.

- g. Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:

- (1) You do your best to maintain heat in the building or structure; or
- (2) You drain the equipment and shut off the supply if the heat is not maintained.

- h. Dishonest or criminal act by you, any of your partners, employees, directors, trustees, authorized representatives or anyone to whom you entrust the property for any purpose:

- (1) Acting alone or in collusion with others; or
- (2) Whether or not occurring during the hours of employment.

This exclusion does not apply to acts of destruction by your employees; but theft by employees is not covered.

- i. Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.

- j. Rain, snow, ice or sleet to personal property in the open.

- k. Collapse, except as provided below in the Additional Coverage for Collapse. But if loss or damage by a Covered Cause of Loss results at the described premises, we will pay for that resulting loss or damage.

- l. Release, discharge or dispersal of "pollutants" unless the release, discharge or dispersal is itself caused by any of the "specified causes of loss". But if loss or damage by the "specified causes of loss" results, we will pay for the resulting damage caused by the "specified cause of loss".

3. We will not pay for loss or damage caused by or resulting from any of the following. But if loss or damage by a Covered Cause of Loss results, we will pay for that resulting loss or damage.

- a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a clause or event excluded in paragraph 1 above to produce the loss or damage.
- b. Acts or decisions, including the failure to act or decide, of any person, group, organization or government body.
- c. Faulty, inadequate or defective:
  - (1) Planning, zoning, development, surveying, siting;
  - (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
  - (3) Materials used in repair, construction, renovation or remodeling; or
  - (4) Maintenance;
 of part or all of any property on or off the described premises.

4. Special exclusions

The following provisions apply only to the specified Coverage Forms.

- a. Business Income (And Extra Expense) Coverage Form, Business Income (Without Extra Expense) Coverage Form, or Extra Expense Coverage Form

We will not pay for:

- (1) Any loss caused by or resulting from:
  - (a) Damage or destruction of "finished stock"; or
  - (b) This time required to reproduce "finished stock".

This exclusion does not apply to Extra Expenses.

- (2) Any loss caused by or resulting from direct physical loss or damage to radio or television antennas, including their lead-in wiring, masts or towers.
- (3) Any increase of loss caused by or resulting from:
  - (a) Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or
  - (b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the suspension of "operations", we will cover such loss that affects your Business Income during the "period of restoration".
- (4) Any Extra Expense caused by or resulting from suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration".
- (5) Any other consequential loss.

- b. Leasehold Interest Coverage Form

- (1) Paragraph B.I.a., Ordinance or Law, does not apply to insurance under this Coverage Form.
- (2) We will not pay for any loss caused by:
  - (a) Your cancelling the lease;
  - (b) The suspension, lapse or cancellation of any license; or
  - (c) Any other consequential loss.

- c. Legal Liability Coverage Form

- (1) The following Exclusions do not apply to insurance under this Coverage Form:
  - (a) Paragraph B.I.a., Ordinance or Law;
  - (b) Paragraph B.I.c., Governmental Action;
  - (c) Paragraph B.I.d., Nuclear Hazard;
  - (d) Paragraph B.I.e., Power Failure; and
  - (e) Paragraph B.I.f., War and Military Action.
- (2) Contractual Liability  
We will not defend any claim or "suit", or pay damages that you are legally liable to pay, solely by reason of your assumption of liability in a contract or agreement.
- (3) Nuclear Hazard  
We will not defend any claim or "suit", or pay any damages, loss, expense or obligation, resulting from nuclear reaction or radiation, or radioactive contamination, however caused.

## C. LIMITATIONS

- 1. We will not pay for loss of or damage to:
  - a. Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
  - b. Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion.

- c. The interior of any building or structure caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:
    - (1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which rain, snow, sleet, ice, sand, or dust enters; or
    - (2) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.
  - d. Building materials and supplies not attached as part of the building or structure, unless held for sale by you, caused by or resulting from theft, except as provided in C.5.a. below
  - e. Property that is missing, but there is no physical evidence to show what happened to it, such as shortage disclosed on taking inventory.
  - f. Gutters and downspouts caused by or resulting from weight of snow, ice or sleet.
  - g. Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions.
2. We will not pay more for loss of or damage to glass that is part of a building or structure than \$250 for each plate, pane, multiple plate, insulating unit, radiant or solar heating panel, jalousie, louver or shutter. We will not pay more than \$2,500 for all loss of or damage to building glass that occurs at any one time.

This Limitation does not apply to loss or damage by the "specified causes of loss", except vandalism.

- 3. We will not pay for loss of or damage to the following types of property unless caused by the "specified causes of loss" or building glass breakage:
  - a. Valuable papers and records, such as books of account, manuscripts, abstracts, drawings, card index systems, film, tape, disc, drum, cell or other data processing, recording or storage media and other records.
  - b. Animals, and then only if they are killed or their destruction is made necessary.
  - c. Fragile articles such as glassware, statuary, marbles, chinaware and porcelains, if broken.

This restriction does not apply to:

- (1) Glass that is part of a building or structure;
    - (2) Containers of property held for sale; or
    - (3) Photographic or scientific instrument lenses.
  - d. Builders' machinery, tools, and equipment you own or that are entrusted to you while away from the premises described in the Declarations, except as provided in paragraph C.5.b. below
4. For loss or damage by theft, the following types of property are covered up to the limits shown:
- a. \$2,500 for furs, fur garments and garments trimmed with fur.
  - b. \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item.
  - c. \$2,500 for patterns, dies, molds and forms.
  - d. \$250 for stamps, tickets and letters of credit.

#### 5. Builders' Risk Coverage Form Limitations

The following provisions apply only to the Builders' Risk Coverage Form

- a. Limitation 1.d. is replaced by the following:
  - d. Building materials and supplies not attached as part of the building or structure caused by or resulting from theft.
- b. Limitation s.d. is replaced by the following:
  - d. Builders' machinery, tools and equipment you own or that are entrusted to you.

## D. ADDITIONAL COVERAGE - COLLAPSE

We will pay for loss or damage caused by or resulting from risks of direct physical loss involving collapse of a building or any part of a building caused only by one or more of the following:

- 1. The "specified causes of loss" or breakage of building glass, all only as insured against in this Coverage Part;
- 2. Hidden decay;
- 3. Hidden insect or vermin damage;
- 4. Weight of people or personal property;
- 5. Weight of rain that collects on a roof;
- 6. Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

We will not pay for loss or damage to the following types of property, if otherwise covered in this Coverage Part., under items 2., 3., 4., 5. and 6. unless the loss or damage is a direct result of the collapse of a building:

outdoor radio or television antennas, including their lead-in wiring, masts or towers; awnings, gutters and down spouts; yard fixtures; outdoor swimming pools; fences; piers, wharves and docks; beach or diving platform1s or appurtenances; retaining walls; walks, roadways and other paved surfaces.

Collapse does not include settling, cracking, shrinking, bulging or expansion.

This Additional Coverage will not increase the Limits of Insurance provided in this Coverage Part.

## E. ADDITIONAL COVERAGE EXTENSIONS

1. Property In Transit. This Extension applies only to your personal property to which this form applies.
  - a. You may extend the insurance provided by this Coverage Part to apply to your personal property (other than property in the care, custody or control of your salespersons) in transit more than 100 feet from the described premises. Property must be in or on a motor vehicle you own, lease or operate while between points in the coverage territory.
  - b. Loss or damage must be caused by or result from one of the following causes of loss:
    - (1) Fire, lightening, explosion, windstorm or hail, riot or civil commotion, or vandalism.
    - (2) Vehicle collision upset or overturns. Collision means accidental contact of your vehicle with another vehicle or object. It does not mean your vehicle's contact with the road bed.
    - (3) Theft of an entire bale, case or package by forced entry into a securely locked body or compartment of the vehicle. There must be visible marks of the forced entry.
  - c. The most we will pay for loss or damage under this Extension is \$1,000.

This Coverage Extension is additional insurance. The Additional Condition, Coinsurance, does not apply to this Extension.

2. Water Damage, Other Liquids, Powder or Molten Material. If loss or damage caused by or resulting from covered water or other liquid, powder or molten material damage occurs, we will also pay the cost to tear out and replace any part of the building or structure to repair damage to the system or appliance from which the water or other substance escapes.

We will not pay for the cost to repair any defect that caused the loss or damage; but we will pay the cost to repair or replace damaged parts of fire extinguishing equipment if the damage:

- a. Results in discharge of any substance from an automatic fire protection system; or
- b. Is directly caused by freezing.

## F. DEFINITIONS

"Specified Causes of Loss" means the following:

Fire; lightening; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.

1. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:
  - a. The cost of filling sinkholes; or
  - b. Sinking or collapse of land into man-made underground cavities.
2. Falling objects does not include loss or damage to:
  - a. Personal property in the open; or
  - b. The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.
3. Water damage means accidental discharge or leakage of water or stream as the direct result of the breaking or cracking of any part of a system or appliance containing water or steam.



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

This endorsement modifies insurance provided under the following FD-CP0032  
Business Income Coverage Form (Without Extra Expense)

**ELECTRONIC DATA ENDORSEMENT B**

**1. Electronic Data Exclusion**

Notwithstanding any provision to the contrary within the Policy or any endorsement thereto, it is understood and agreed as follows:

- a) This Policy does not insure loss, damage, destruction, distortion, erasure, corruption or alteration of ELECTRONIC DATA from any cause whatsoever (including but not limited to COMPUTER VIRUS) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting therefrom, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

ELECTRONIC DATA means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

COMPUTER VIRUS means a set of corrupting, harmful or otherwise unauthorized instructions or code including a set of maliciously introduced unauthorized instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature. COMPUTER VIRUS includes but is not limited to 'Trojan Horses', 'worms' and 'time or logic bombs'.

- b) However, in the event that a peril listed below results from any of the matters described in paragraph a) above, this Policy, subject to all its terms, conditions and exclusions, will cover physical damage occurring during the Policy period to property insured by this Policy directly caused by such listed peril.

Listed Perils

Fire  
Explosion

**2. Electronic Data Processing Media Valuation**

Notwithstanding any provision to the contrary within the Policy or any endorsement thereto, it is understood and agreed as follows:

Should electronic data processing media insured by this Policy suffer physical loss or damage insured by this Policy, then the basis of valuation shall be the cost of the blank media plus the costs of copying the ELECTRONIC DATA from back-up or from originals of a previous generation. These costs will not include research and engineering nor any costs of recreating, gathering or assembling such ELECTRONIC DATA. If the media is not repaired, replaced or restored the basis of valuation shall be the cost of the blank media. However this Policy does not insure any amount pertaining to the value of such ELECTRONIC DATA to the Assured or any other party, even if such ELECTRONIC DATA cannot be recreated, gathered or assembled.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

Date Issued: 2020-07-15



## COMMERCIAL PROPERTY CONDITIONS

This Coverage Part is subject to the following conditions, the Common Policy Conditions and applicable Loss Conditions and Additional Conditions in Commercial Property Coverage Forms.

### A. CONCEALMENT, MISREPRESENTATION OR FRAUD

This Coverage Part is void in any case of fraud by you as it relates to this Coverage Part at any time. It is also void if you or any other insured, at any time, intentionally conceal or misrepresent a material fact concerning:

1. This Coverage Part;
2. This Covered Property;
3. Your interest in the Covered Property; or
4. A claim under this Coverage Part.

### B. CONTROL OF PROPERTY

Any act or neglect of any person other than you beyond your direction or control will not affect this insurance.

The breach of any condition of this Coverage Part at any one or more locations will not affect coverage at any location where, at the time of loss or damage, the breach of condition does not exist.

### C. INSURANCE UNDER TWO OR MORE COVERAGES

If two or more of this policy's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.

### D. LEGAL ACTION AGAINST US

No one may bring legal action against us under this Coverage Part unless:

1. There has been full compliance with all of the terms of this Coverage Part; and
2. The action is brought within 2 years after the date on which the direct physical loss or damage occurred.

### E. LIBERALIZATION

If we adopt any revision that would broaden the coverage under this Coverage Part without additional premium within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this Coverage Part.

### F. NO BENEFIT TO BAILEE

No person or organization, other than you, having custody of Covered Property will benefit from this insurance.

### G. OTHER INSURANCE

1. You may have other insurance subject to the same plan, terms, conditions, and provisions as the insurance under this Coverage Part. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering on the same basis.
2. If there is other insurance covering the same loss or damage, other than that described in 1. above, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance.

### H. POLICY PERIOD, COVERAGE TERRITORY

Under this Coverage Part:

1. We cover loss or damage commencing:
  - a. During the policy period shown in the Declarations; and
  - b. Within the coverage territory.
2. The coverage territory is:
  - a. The United States of America (including its territories and possessions);
  - b. Puerto Rico; and
  - c. Canada

#### **I. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US**

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If any person or organization to or for whom we make payment under this Coverage Part has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:

1. Prior to a loss to your Covered Property or Covered Income.
2. After a loss to your Covered Property or Covered Income only if, at time of loss, that party is one of the following:
  - a. Someone insured by this insurance;
  - b. A business firm:
    - (1) Owned or controlled by you; or
    - (2) That owns or controls you; or
  - c. Your tenant.

This will not restrict your insurance.



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

This endorsement modifies insurance provided under the following:

**Form No. FD-CP1030**

**CAUSES OF LOSS - SPECIAL FORM**

**SJC MOLD EXCLUSION**

The following provision changes coverage afforded by the Policy:

**TOTAL "MOLD" EXCLUSION**

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Notwithstanding anything to the contrary contained in the Policy,:

We will not pay for loss, damage, cost, or expense caused directly or indirectly by, arising out of, resulting from, contributed to by, or related in any way to "mold". Loss, damage, cost, or expense caused directly or indirectly by, arising out of, resulting from, contributed to by, or related in any way to "mold" is excluded regardless of any other cause or event that contributes concurrently, or in any sequence with, the loss, damage, cost or expense.

The following definition is added to the Policy;

"Mold" means any species of fungi, including, but not limited to, mold, yeast, mildew, spores, mold toxins, mycotoxins, mold metabolites, mold antigens, mold allergens, smut, wet or dry rot, mold-produced antibiotics, or dust or fumes containing any of the foregoing, individually, or in any combination therewith or with another substance.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

**OWL UNDERWRITING AGENCY**

A handwritten signature in black ink, appearing to read "R. H. [unclear]", is written over a horizontal line.

Authorized Representative

Date Issued: 2020-07-15



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

**MONITORED ALARM REQUIREMENT – CONDITIONS PRECEDENT**

This endorsement modifies insurance provided under the following:

BUILDING & PERSONAL PROPERTY COVERAGE FORM

It is hereby noted and agreed that as a condition precedent to coverage for Burglary or Theft, the insured must have and maintain a monitored central station alarm system which is functioning properly at the time of loss.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Date Issued: 2020-07-15



## COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under WHO IS AN INSURED (SECTION II).

Other words and phrases that appear in quotation marks have special meaning. Refer to DEFINITIONS (SECTION V).

### SECTION I - COVERAGES

#### COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY

##### 1. Insuring Agreement.

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend any "suit" seeking those damages. We may at our discretion investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in LIMITS OF INSURANCE (SECTION III); and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

- b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory"; and
- (2) The "bodily injury" or "property damage" occurs during the policy period.

- c. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

##### 2. Exclusions.

This insurance does not apply to:

- a. "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.
- b. "Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:
  - (1) Assumed in a contract or agreement that is an "insured contract" provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement; or
  - (2) That the insured would have in the absence of the contract or agreement.
- c. "Bodily injury" or "property damage" for which any insured may be held liable by reason of:
  - (1) Causing or contributing to the intoxication of any person;
  - (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
  - (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

- d. Any obligation of the insured under a workers' or unemployment compensation law or any similar law.
- e. "Bodily injury" to:
  - (1) An employee of the insured arising out of and in the course of employment by the insured; or

- (2) The spouse, child, parent, brother or sister of that employee as a consequence of (1) above

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and  
 (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f.

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants:
- (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured;
  - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
  - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization for whom you may be legally responsible; or
  - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations:
    - (i) if the pollutants are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor; or
    - (ii) if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

Subparagraphs (a) and (d) (i) do not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a hostile fire.

As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants; or
  - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

- g. "Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent
- (2) A watercraft you do not own that is:
  - (a) Less than 26 feet long; and
  - (b) Not being used to carry persons or property for a charge;
- (3) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (4) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in paragraph f.(2) or f.(3) of the definition of "mobile equipment" (Section V.8.).

h. "Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity;
- (3) The ownership, maintenance or use of any "mobile equipment" which is not listed under the schedule of exposures and applicable premium paid hereunder.

i. "Bodily injury" or "property damage" due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution. This exclusion applies only to liability assumed under a contract or agreement.

j. "Property damage" to:

- (1) Property you own, rent, or occupy;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;

- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraph (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard."

- k. "Property damage" to "your product" arising out of it or any part of it.
- l. "Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard."

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

- m. "Property damage" to "impaired property" or property that has not been physically injured. Arising out of:
  - (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
  - (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

- n. Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:
  - (1) "Your product";
  - (2) "Your work"; or
  - (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

Exclusion c. through n. do not apply to damage by fire to premises rented to you.

## COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY

### 1. Insuring Agreement.

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal injury" or "advertising injury" to which this coverage part applies. We will have the right and duty to defend any "suit" seeking those damages. We may at our discretion investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:
  - (1) The amount we will pay for damages is limited as described in LIMITS OF INSURANCE (SECTION III); and
  - (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverage A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS - COVERAGES A AND B.

- b. This insurance applies to:
  - (1) "Personal injury" caused by an offense arising out of your business, excluding advertising, publishing, broadcasting or telecasting done by or for you;
  - (2) "Advertising injury" caused by an offense committed in the course of advertising your goods, products or services;

but only if the offense was committed in the "coverage territory" during the policy period.

### 2. Exclusions.

This insurance does not apply to:

- a. "Personal injury" or "advertising injury";
  - (1) Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity;
  - (2) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;

- (3) Arising out of the willful violation of a penal statute or ordinance committed by or with the consent of the insured; or
- (4) For which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

b. "Advertising injury" arising out of:

- (1) Breach of contract, other than misappropriation of advertising ideas under an implied contract;
- (2) The failure of goods, products or services to conform with advertised quality or performance;
- (3) The wrong description of the price of goods, products or services; or
- (4) An offense committed by an insured whose business is advertising, broadcasting, publishing or telecasting.

## COVERAGE C. MEDICAL PAYMENTS

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### 1. Insuring Agreement.

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
- (2) On ways next to premises you own or rent; or
- (3) Because of your operations;

provided that:

- (1) The accident takes place in the "coverage territory" and during the policy period;
- (2) The expenses are incurred and reported to us within one year of the date of the accident; and
- (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

### 2. Exclusions.

We will not pay expenses for "bodily injury":

- a. To any insured.
- b. To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. To a person injured on that part of premises you own or rent that the person normally occupies.
- d. To a person, whether or not an employee of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or similar law.
- e. To a person injured while taking part in athletics.
- f. Included within the "products-completed operations hazard".
- g. Excluded under Coverage A.
- h. Due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution.

## SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

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We will pay, with respect to any claim or "suit" we defend:

- 1. All expenses we incur.
- 2. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- 3. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.

4. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$100 a day because of time off from work.
5. All costs taxed against the insured in the "suit".
6. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
7. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will reduce the limits of insurance.

## SECTION II- WHO IS AN INSURED

1. If you are designated in the Declarations as:
  - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
  - c. An organization other than a partnership or joint venture, you are an insured. Your executive officers and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
2. Each of the following is also an insured:
  - a. Your employees, other than your executive officers, but only for acts within the scope of their employment by you. However, no employee is an insured for:
    - (1) "Bodily injury" or "personal injury" to you or to a co- employee while in the course of his or her employment, or the spouse, child, parent, brother or sister of that co-employee as a consequence of such "bodily injury" or "personal injury", or for any obligation to share damages with or repay someone else who must pay damages because of the injury; or
    - (2) "Bodily injury" or "personal injury" arising out of his or her providing or failing to provide professional health care services; or
    - (3) "Property damage" to property owned or occupied by or rented or loaned to that employee, any of your other employees, or any of your partners or members (if you are a partnership or joint venture).
  - b. Any person (other than your employee), or any organization while acting as your real estate manager.
  - c. Any person or organization having proper temporary custody of your property if you die, but only:
    - (1) With respect to liability arising out of the maintenance or use of that property; and
    - (2) Until your legal representative has been appointed.
  - d. Your legal representative if you die but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
3. With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:
  - a. "Bodily injury" to a co-employee of the person driving the equipment; or
  - b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.
4. Any organization you newly acquire or form, other than a partnership or joint venture, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
  - a. Coverage under this provision is afforded only until the 90th day after your acquire or form the organization or the end of the policy period, whichever is earlier;
  - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
  - c. Coverage B does not apply to "personal injury" or "advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations.

### SECTION III - LIMITS OF INSURANCE

1. The limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits".
2. The General Aggregate Limit is the most we will pay for the sum of:
  - a. Medical expenses under Coverage C;
  - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
  - c. Damages under Coverage B.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal injury" and all "advertising injury" sustained by any one person or organization.
5. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
  - a. Damages under Coverage A; and
  - b. Medical expenses under Coverage C

because of all "bodily injury" and "property damage" arising out of any one "occurrence".

6. Subject to 5. above, the Fire Damage Limit is the most we will pay under Coverage A for damages because of "property damage" to premises rented to you arising out of any one fire.
7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The limits of the Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

### SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

#### 1. Bankruptcy.

- a. Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

#### 2. Duties In The Event Of Occurrence, Claim Or Suit.

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
  - (1) How, when and where the "occurrence" or offense took place;
  - (2) The names and addresses of any injured persons and witnesses; and
  - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against any insured, you must:
  - (1) Immediately record the specifics of the claim or "suit" and the date received; and
  - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
  - (2) Authorize us to obtain records and other information;
  - (3) Cooperate with us in the investigation, settlement or defense of the claim or "suit"; and
  - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d. No insureds will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

### **3. Legal Action Against Us.**

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

### **4. Other Insurance.**

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

#### **a. Primary Insurance.**

This insurance is primary except when b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in c. below.

#### **b. Excess Insurance.**

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

- (1) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
- (2) That is Fire insurance for premises rented to you; or
- (3) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Coverage A (Section I).

When this insurance is excess, we will have no duty under Coverage A or B to defend any claim or "suit" that any other insurer has a duty to defend. If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of the Coverage Part.

#### **c. Method of Sharing.**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

### **5. Premium Audit.**

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advanced premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy term is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

#### **6. Representations.**

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

#### **7. Separation of Insureds.**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

#### **8. Transfer of Rights of Recovery Against Others To Us.**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

#### **9. When We Do Not Renew.**

If we decide not to renew this Coverage Part, we will mail or deliver the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

## **SECTION V - DEFINITIONS**

#### **1. "Advertising injury" means injury arising out of one or more of the following offenses:**

- a. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- b. Oral or written publication of material that violates a person's right of privacy;
- c. Misappropriation of advertising ideas or style of doing business; or
- d. Infringement of copyright, title or slogan.

#### **2. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".**

#### **3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.**

#### **4. "Coverage Territory" means:**

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;

- b. International waters or airspace, provided the injury or damage does not occur in the course of travel or transportation to or from any place not included in a. Above; or
  - c. All parts of the world if:
    - (1) The injury or damage arises out of:
      - (a) Goods or products made or sold by you in the territory described in a. above; or
      - (b) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; and
    - (2) The insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in a. above or in a settlement we agree to.
5. **"Impaired property"** means tangible property other than "your product" or "your work" that cannot be used or is less useful because:
- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. You have failed to fulfill the terms of a contract or agreement;
- if such property can be restored to use by:
- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
  - b. Your fulfilling the terms of the contract or agreement.
6. **"Insured Contract"** means any written:
- a. Lease of premises
  - b. Easement agreement, except in connection with construction or demolition operations on or adjacent to a railroad;
  - c. Indemnification of a municipality as required by ordinance, except in connection with work for the municipality;
  - d. Sidetrack agreement or any easement or license agreement in connection with vehicle or pedestrian private railroad crossings at grade; or
  - e. Elevator maintenance agreement.
- An "insured contract" does not include that part of any contract or agreement that indemnifies any person or organization for damage by fire to premises rented or loaned to your.
7. **"Loading or unloading"** means the handling of property:
- a. After it is removed from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
  - b. While it is in or on an aircraft, watercraft or "auto"; or while it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
8. **"Mobile equipment"** means any of the following types of land vehicles, including any attached machinery or equipment.
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
  - b. Vehicles maintained for use solely on or next to premises you own or rent;
  - c. Vehicles that travel on crawler treads;
  - d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
    - (1) Power cranes, shovels, loaders, diggers or drills; or
    - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;

- e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c., or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
  - (a) Snow Removal
  - (b) Road maintenance, but not construction or resurfacing;
  - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

9. **"Occurrence"** means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

10. **"Personal injury"** means injury, other than "bodily injury", arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies by or on behalf of its owner, landlord or lessor;
- d. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or
- e. Oral or written publication of material that violates a person's right of privacy.

11.

- a. **"Products-completed operations hazard"** includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
  - (1) Products that are still in your physical possession; or
  - (2) Work that has not yet been completed or abandoned.
- b. "Your work" will be deemed completed at the earliest of the following times:
  - (1) When all of the work called for in your contract has been completed.
  - (2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site.
  - (3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- c. This hazard does not include "bodily injury" or "property damage" arising out of:
  - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle created by the "loading or unloading" of it;
  - (2) The existence of tools, uninstalled equipment or abandoned or unused materials;
  - (3) Products or operations for which the classification in this Coverage Part or in our manual of rules includes products or completed operations.

12. **"Property damage"** means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

- b. Loss of use of tangible property that is not physically injured. All such loss shall be deemed to occur at the time of the "occurrence" that caused it.
13. **"Suit"** means civil proceeding in which damage because of "bodily injury", "property damage", "personal injury" or "advertising injury" to which this insurance applies are alleged. "Suit" includes:
- a. An arbitration proceeding in which such damages are claimed and to which you must submit or do submit with our consent; or
  - b. Any other alternative dispute resolutions proceeding in which such damages are claimed and to which you submit with our consent.
14. **"Your product"** means:
- a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
    - (1) You;
    - (2) Others trading under your name; or
    - (3) A person or organization whose business or assets you have acquired; and
  - b. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

"Your product" includes:

- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- b. The providing of or failure to provide warnings or instructions.

"Your product" does not include vending machines or other property rented to or located for the use of others but not sold.

15. **"Your work"** means:

- a. Work or operations performed by you or on your behalf; and
- b. Materials, parts or equipment furnished in connection with such work or operations.

"Your work" includes:

- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
- b. The providing of or failure to provide warnings or instructions.



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

**HIRED AUTO AND NON-OWNED AUTO LIABILITY**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

**SCHEDULE**

Insurance is provided only with respect to those coverages for which a specific premium charge is shown:

	<u><b>Coverages</b></u>	<u><b>Additional Premium</b></u>
Non-Ownership Liability	\$1,000,000.	\$ included
Hired Auto Liability	Not Covered	\$ nil

**NON-OWNED AUTO LIABILITY.**

The insurance provided under COVERAGE A (Section I) applies to "bodily injury" or "property damage" arising out of the use of any "non-owned auto" in your business by any person other than you.

The following additional definitions apply:

"Auto business" means the business or occupation of repairing, servicing, storing or parking "autos".

"Hired auto" means any "auto" you lease, hire or borrow. This does not include any "auto" you lease, hire or borrow from any of your employees or members of their households, or from any partner or executive officer of yours.

"Non-owned auto" means any "auto" you do not own, lease, hire or borrow which are used in connection with your business. However, if you are a partnership a "non-owned auto" does not include any auto owned by any partner.

**HIRED AUTO LIABILITY**

The insurance provided under COVERAGE A (Section I) applies to "bodily injury" or "property damage" arising out of the maintenance or use of a "hired auto" by you or your employees in the course of your business.

With respect to the insurance provided by this endorsement:

1. The exclusions, under COVERAGE A (Section I), other than exclusions a, b, d, f and i and the Nuclear Energy Liability Exclusion (Broad Form) are deleted and replaced by the following:

- a. "Bodily injury":

- (1) To an employee of the insured arising out of and in the course of employment by the insured; or
    - (2) To the spouse, child, parent, brother or sister of that employee as a consequence of (1) above.

Exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
    - (2) To any obligation to share damages with or repay someone else who must pay damages because of injury.

This exclusion does not apply to:

- (1) Liability assumed by the insured under an "insured contract"; or
  - (2) "Bodily injury" arising out of and in the course of domestic employment by the insured unless benefits for such injury are in whole or in part either payable or required to be provided under any workers compensation law.
- b. "Property damage" to:
- (1) Property owned or being transported by or rented or loaned to the insured; or
  - (2) Property in the care, custody or control of the insured.

2. WHO IS AN INSURED (Section II) is replaced by the following:

a. Each of the following is an insured under this insurance to the extent set forth below:

- a. You;
- b. Any other person using a "hired auto" with your permission;
- c. With respect to a "non-owned auto" any partner or executive officer of yours, but only while such "non-owned auto" is being used in your business;
- d. Any other person or organization, but only with respect to their liability because of acts or omissions of an insured under a, b, or c above.

None of the following is an insured:

- a. Any person engaged in the business of his or her employer with respect to "bodily injury" to any co-employee of such person injured in the course of employment;
- b. Any partner or executive officer with respect to any "auto" owned by such partner or officer or a member of his or her household;
- c. Any person while employed in or otherwise engaged in duties in connection with an "auto business", other than an "auto business" you operate;
- d. The owner or lessee (of whom you are a sub lessee) of a "hired auto" or the owner of a "non-owned auto" or any agent or employee of any such owner or lessee;
- e. Any person or organization with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declaration.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Date Issued: 2020-07-15



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

**PRODUCTS / COMPLETED OPERATIONS HAZARD REDEFINED**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

With respect to "bodily injury" or "property damage" arising out of "your products" manufactured, sold, handled or distributed:

1. On, from or in connection with the use of any premises described in the Schedule, or
2. In connection with the conduct of any operation described in the Schedule, when conducted by you or on your behalf,

Paragraph a, of the definition of "Products-completed Operations hazard" in the DEFINITIONS Section is replaced by the following:

- a. "Products-completed operations hazard" includes all "bodily injury" and "property damage" that arises out of "your products" if the "bodily injury" or "property damage" occurs after you have relinquished possession of those products.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

Date Issued: 2020-07-15



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

**EXCLUSION – DESIGNATED PROFESSIONAL SERVICES**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

With respect to any professional services, including, but not limited to, the instruction or supervision of diving activities, snorkel activities or swimming activities, this insurance does not apply to "bodily injury", "property damage", "personal injury" or "advertising injury" due to the rendering of or failure to render any professional service by anyone whenever or wherever occurring, including any allegations of vicarious liability for the actions of another.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Date Issued: 2020-07-15



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

**ABSOLUTE AUTO, AIRCRAFT AND WATERCRAFT EXCLUSION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions**, paragraph **g.** is deleted and replaced with the following:

- g. "Bodily injury" or "property damage" arising directly or indirectly out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft. Use includes operations and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervisions, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

Date Issued: 2020-07-15



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

#### **IMMUNE DEFICIENCY EXCLUSION**

In consideration of the premium charged and notwithstanding anything contained in this policy to the contrary, it is understood and agreed that this policy shall not provide coverage of any kind for any claims related directly or indirectly to:

1. The Human Immune Deficiency Virus (HIV);
2. The Acquired Immune Deficiency Syndrome Related Complex (ARC)
3. The Acquired Immune Deficiency Syndrome (AIDS)
4. Any Virus, Complex or Syndrome that is related to the foregoing.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Date Issued: 2020-07-15



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

**PUNITIVE OR EXEMPLARY DAMAGES EXCLUSION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

This policy excludes all coverage for punitive or exemplary damages whether arising out of acts of the insured, insured's employees or any other person.

If the exclusion of punitive or exemplary damages is not permitted by the law of the state in which a claim for punitive or exemplary damages is brought, then this exclusion shall limit those damages to the extent permitted by law, but in no event shall the total of compensatory and punitive or exemplary damages be payable in excess of the limit of coverages provided herein.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

Date Issued: 2020-07-15



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

**EXCLUSION - DIVING BOARDS**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

This policy does not provide coverage for any claim arising out of any incident occurring on a diving board or arising out of the use, ownership or maintenance of a diving board.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Date Issued: 2020-07-15



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

**ASSAULT AND BATTERY EXCLUSION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

In consideration of the premium charged, it is agreed that NO coverage of any kind (including but not limited to cost of defense) is provided by this policy for Bodily Injury and/or Property Damage arising out of or caused in whole or in part by an assault and/or battery. Further, NO coverage is provided if the underlying operative facts constitute an assault and/or battery irrespective of whether the claim alleges negligent hiring, supervision and/or retention against the insured or any other negligent action.

This endorsement supplements any other provision(s) of the policy to the extent it is not inconsistent therewith. In the event this endorsement is deemed inconsistent with any other provision of the policy, then this endorsement overrides and replaces that provision.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

Date Issued: 2020-07-15



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

**EXCLUSION - ATHLETIC OR SPORTS PARTICIPANTS**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

It is hereby noted and agreed that this insurance does not apply to "bodily injury" to any person while practicing for or participating in any sports or athletic contest or exhibition that you sponsor.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Date Issued: 2020-07-15



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

This endorsement modifies insurance provided under the following:

**FD-GL0001**

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

**SJC MOLD EXCLUSION**

Notwithstanding anything to the contrary contained in the Policy,:

We will not pay for loss, damage, cost, or expense caused directly or indirectly by, arising out of, resulting from, contributed to by, or related in any way to "mold". Loss, damage, cost, or expense caused directly or indirectly by, arising out of, resulting from, contributed to by, or related in any way to "mold" is excluded regardless of any other cause or event that contributes concurrently, or in any sequence with, the loss, damage, cost or expense.

The following definition is added to the Policy;

"Mold" means any species of fungi, including, but not limited to, mold, yeast, mildew, spores, mold toxins, mycotoxins, mold metabolites, mold antigens, mold allergens, smut, wet or dry rot, mold-produced antibiotics, or dust or fumes containing any of the foregoing, individually, or in any combination therewith or with another substance.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

Date Issued: 2020-07-15



## CRIME COVERAGE GENERAL PROVISIONS

The provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the DECLARATIONS. The words "we", "us" and "our" refer to the Company providing this insurance.

The phrases in quotation marks are defined in the policy.

Unless stated otherwise in any Crime Coverage Form, DECLARATIONS or endorsement, the following General Exclusions, General Conditions and General Definitions apply to all Crime Coverage Forms forming part of this policy.

### A. GENERAL EXCLUSIONS

1. Acts Committed by You or Your Partners: Loss resulting from any dishonest or criminal act committed by you or any of your partners whether acting alone or in collusion with other persons.
2. Governmental Action: Loss resulting from seizure or destruction of property by order of governmental authority.
3. Indirect Loss: Loss that is an indirect result of any act or "occurrence" covered by this insurance including, but not limited to, loss resulting from:
  - a. Your inability to realize income that you would have realized had there been no loss of, or loss from damage to, Covered Property.
  - b. Payment of damages of any type for which you are legally liable. But, we will pay compensatory damages arising directly from a loss covered under this insurance.
  - c. Payment of costs, fees or other expenses you incur in establishing either the existence or the amount of loss under this insurance.
4. Legal Expenses: Expenses related to any legal action.
5. Nuclear: Loss resulting from the nuclear reaction, nuclear radiation or radioactive contamination, or any related act or incident.

### B. GENERAL CONDITIONS

1. Consolidation-Merger: If through consolidation or merger with, or purchase of assets of, some other entity:
  - a. Any additional persons become "employees"; or
  - b. Your acquire the use and control of any additional "premises";

any insurance afforded for "employees" or "premises" also applies to those additional "employees" and "premises", but only if you:

- a. Give us written notice within 30 days thereafter; and
  - b. Pay us an additional premium.
2. Coverage Extensions: Unless stated otherwise in the Coverage Form, our liability under any Coverage Extension is part of, not in addition to, the Limit of Insurance applying to the Coverage or Coverage Section.
3. Discovery Period of Loss: We will pay only for covered loss discovered no later than one year from the end of the policy period.
4. Duties in the Event of Loss: After you discover a loss or a situation that may result in loss of, or loss from damage to, Covered Property you must:
  - a. Notify us as soon as possible.
  - b. Submit to examination under oath at our request and give us a signed statement of your answers.
  - c. Give us detailed, sworn proof of loss within 120 days.
  - d. Cooperate with us in the investigation and settlement of any claim.
5. Joint Insured

- a. If more than one Insured is named in the DECLARATIONS, the first named insured will act for itself and for every other Insured for all purposes of this insurance. If the first named Insured ceases to be covered, then the next named Insured will become the first named Insured.
- b. If any Insured or partner or officer of that Insured has knowledge of any information relevant to this insurance, that knowledge is considered knowledge of every insured.
- c. An "employee" of any Insured is considered to be an "employee" of every insured.
- d. If this insurance or any of its coverage is cancelled or terminated as to any insured, loss sustained by that Insured is covered only if discovered no later than one year from the date of that cancellation or termination.
- e. We will not pay more for loss sustained by more than one Insured than the amount we would pay if all the loss had been sustained by one Insured

6. Legal Action Against Us: You may not bring any legal action against us involving loss:

- a. Unless you have complied with all the terms of this insurance; and
- b. Until 90 days after you have filed proof of loss with us; and
- c. Unless brought within 2 years from the date you discover the loss.

7. Loss Covered Under More Than One Coverage of This Insurance: If two or more coverages of this insurance apply to the same loss, we will pay the lesser of:

- a. The actual amount of loss; or
- b. The sum of the limits of insurance applicable to those coverages.

8. Loss Sustained During Prior Insurance.

- a. If you, or any predecessor in interest, sustained loss during the period of any prior insurance that you or the predecessor in interest could have recovered under that insurance except that the time within which to discover loss had expired, we will pay for it under this insurance, provided:
  - (1) This insurance became effective at the time of cancellation or termination of the prior insurance; and
  - (2) The loss would have been covered by this insurance had it been in effect when the acts or events causing the loss were committed or occurred.
- b. The insurance under this Condition is part of, not in addition to, the Limits of Insurance applying to this insurance and is limited to the lesser of the amount recoverable under:
  - (1) This insurance as of its effective date; or
  - (2) The prior insurance had it remained in effect.

9. Loss Covered Under This Insurance and Prior Insurance Issued by Us or Any Affiliate: If any loss is covered:

- a. Partly by this insurance; and
- b. Partly by any prior cancelled or terminated insurance that we or any affiliate had issued to you or any predecessor in interest;

the most we will pay is the larger of the amount recoverable under this insurance or the prior insurance.

10. Non-Cumulation of Limit of Insurance: Regardless of the number of years this insurance remains in force or the number of premiums paid, no Limit of Insurance cumulates from year to year or period to period.

11. Other Insurance: This insurance does not apply to loss recoverable or recovered under other insurance or indemnity. However, if the limit of the other insurance or indemnity is insufficient to cover the entire amount of the loss, this insurance will apply to that part of the loss, other than that failing within any deductible amount, not recoverable or recovered under the other insurance or indemnity. However, this insurance will not apply to the amount of loss that is more than the applicable Limit of Insurance shown in the DECLARATIONS.

12. Ownership of Property; Interests Covered: The property covered under this Insurance is limited to property:

- a. That you own or hold; or
- b. For which you are legally liable.

However, this insurance is for your benefit only. It provides no rights or benefits to any other person or organization.

13. Policy Period:

- a. The Policy Period is shown in the DECLARATIONS.
- b. Subject to the Loss Sustained During Prior Insurance condition, we will pay only for loss that you sustain through acts committed or events occurring during the Policy Period.

14. Records: You must keep records of all Covered Property so we can verify the amount of any loss.

15. Recoveries

- a. Any recoveries, less the cost of obtaining them, made after settlement of loss covered by this insurance will be distributed as follows:
  - (1) To you, until you are reimbursed for any loss that you sustain that exceeds the Limit of Insurance and the Deductible Amount, if any;

- (2) Then to us, until we are reimbursed for the settlement made;
  - (3) Then to you, until you are reimbursed for that part of the loss equal to the Deductible Amount, if any.
- b. Recoveries do not include any recovery:
  - (1) From insurance, suretyship, reinsurance, security or indemnity taken for our benefit; or
  - (2) Of original "securities" after duplicates of them have been issued.
- 16. Territory: This insurance covers only acts committed or events occurring within the United States of America, US Virgin Islands, Puerto Rico, Canal Zone, or Canada.
- 17. Transfer of Your Rights of Recovery Against Others to Us: You must transfer to us all your rights of recovery against any person or organization for any loss you sustained and for which we have paid or settled. You must also do everything necessary to secure those rights and do nothing after loss to impair them.
- 18. Valuation - Settlement
  - a. Subject to the applicable Limit of Insurance provision we will pay for:
    - (1) Loss of "money" but only up to and including its face value. We may, at our option, pay for loss of "money" issued by any country other than the United States of America:
      - (a) At face value in the "money" issued by that country; or
      - (b) In the United States of America dollar equivalent determined by the rate of exchange on the day the loss was discovered.
    - (2) Loss of "securities" but only up to and including their value at the close of business on the day the loss was discovered. We may, at our option:
      - (a) Pay the value of such "securities" or replace them in kind, in which event you must assign to us all your rights, title and interest in and to those "securities";
      - (b) Pay the cost of any Lost Securities Bond required in connection with issuing duplicates of the "securities". However, we will be liable only for the payment of so much of the cost of the bond as would be charged for a bond having a penalty not exceeding the lesser of the:
        - (i) Value of the "securities" at the close of business on the day the loss was discovered; or
        - (ii) Limit of Insurance.
    - (3) Loss of, or loss from damage to, "property other than money and securities" or loss from damage to the "premises" for not more than the:
      - (a) Actual cash value of the property on the day the loss was discovered;
      - (b) Cost of repairing the property or "premises"; or
      - (c) Cost of replacing the property with property of like kind and quality.
  - b. We may, at our option, pay for loss of, or loss from damage to, property other than "money":
    - (1) In the "money" of the country in which the loss occurred; or
    - (2) In the United States of America dollar equivalent of the "money" of the country in which the loss occurred determined by the rate of exchange on the day the loss was discovered.
  - c. Any property that we pay for or replace becomes our property.

## C. GENERAL DEFINITIONS

- 1. **"Employee"** means:
  - a. Any natural person:
    - (1) While in your service (and for 30 days after termination of service); and
    - (2) Whom you compensate directly by salary, wages or commissions; and
    - (3) Whom you have the right to direct and control while performing services for you; or
  - b. Any natural person employed by an employment contractor while that person is subject to your direction and control and performing services for you excluding, however, any such person while having care and custody of property outside the "premises".

But "employee" does not mean any:

- (1) Agent, broker, factor, commission merchant, consignee, independent contractor or representative of the same general character; or
- (2) Director or trustee except while performing acts coming within the scope of the usual duties of an employee.

- 2. **"Money"** means:
  - a. Currency, coins and bank notes in current use and having a face value; and
  - b. Travelers checks, register checks and money orders held for sale to the public.

3. **"Property Other Than Money and Securities"** means any tangible property other than "money" and "securities" that has intrinsic value but does not include any property listed in any Crime Coverage Form as Property Not Covered.
4. **"Securities"** means negotiable and non-negotiable instruments or contracts representing either "money" or other property and includes:
  - a. Tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and
  - b. Evidences of debt issued in connection with credit or charge cards, which cards are not issued by you;but does not include "money".



## EMPLOYEE DISHONESTY COVERAGE FORM (Coverage Form A - Blanket)

### A. COVERAGE

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We will pay for loss of, and loss from damage to, Covered Property resulting directly from the Covered Cause of Loss.

1. Covered Property: "Money", "securities", and "property other than money and securities".
2. Covered Cause of Loss: "Employee dishonesty".
3. Coverage Extension  
Employees Temporarily Outside Coverage Territory: We will pay for loss caused by any "employee" while temporarily outside the territory specified in the Territory General Condition for a period not more than 90 days.

### B. LIMIT OF INSURANCE

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The most we will pay for loss in any one "occurrence" is the applicable Limit of Insurance shown in the DECLARATIONS.

### C. DEDUCTIBLE

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1. We will not pay for loss in any one "occurrence" unless the amount of loss exceeds the Deductible Amount shown in the DECLARATIONS. We will then pay the amount of loss in excess of the Deductible Amount, up to the Limit of Insurance.
2. You must:
  - a. Give us notice as soon as possible of any loss of the type insured under this Coverage Form even though it falls entirely within the Deductible Amount.
  - b. Upon our request, give us a statement describing the loss.

### D. ADDITIONAL EXCLUSIONS, CONDITION AND DEFINITIONS:

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In addition to the provisions in the Crime General Provisions, this Coverage Form is subject to the following:

1. **Additional Exclusions:** We will not pay for loss as specified below:
  - a. Employee Cancelled Under Prior Insurance: loss caused by an "employee" of yours, or predecessor in interest of yours, for whom similar prior insurance has been cancelled and not reinstated since the last such cancellation.
  - b. Inventory Shortages: loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:
    - (1) An inventory/computation; or
    - (2) A profit and loss computation.

#### 2. Additional Condition.

Cancellation As To Any Employee: This insurance is cancelled as to any "employee"

- a. Immediately upon discovery by:
  - (1) You; or
  - (2) Any of your partners, officers or directors not in collusion with the "employee";
 of any dishonest act committed by that "employee" whether before or after becoming employed by you.
- b. On the date specified in a notice mailed to you. That date will be at least 30 days after the date of mailing. The mailing of notice to you at the last mailing address known to us will be sufficient proof of notice. Delivery of notice is the same as mailing.

#### 3. Additional Definitions.

- a. "Employee Dishonesty" in paragraph A.2 means only dishonest acts committed by an "employee", whether identified or not, acting alone or in collusion with other persons, except you or a partner, with the manifest intent to:
  - (1) Cause you to sustain loss; and also
  - (2) Obtain financial benefit (other than employee benefits earned in the normal course of employment, including: salaries, commissions, fees, bonuses, promotions, awards, profit sharing or pensions) for:
    - (a) The "employee"; or
    - (b) Any person or organization intended by the "employee" to receive that benefit.
- b. "Occurrence" means all loss caused by, or involving, one or more "employee", whether the result of a single act or series of acts.



## INSIDE AND OUTSIDE ROBBERY AND HOLD-UP

### A. INDEMNITY AGREEMENT

The Insurer agrees subject to the statements contained in the Declarations, the provisions, stipulations, and conditions contained herein and such other exclusions, limitations, conditions, and terms contained in this policy, as follows:

1. **OUTSIDE ROBBERY (HOLD-UP).** To indemnify the Insured to an amount not exceeding the limit of liability stated in the Declarations for loss of or damage to money and securities, including the carrying container thereof, and merchandise, caused by Robbery or attempt thereof from a custodian outside the premises of the Insured but within Canada or the United States of America.
2. **INSIDE ROBBERY (HOLD-UP).** To indemnify the Insured to an amount not exceeding the limit of liability stated in the Declarations for loss of or damage to money, securities, furniture, fixtures and other property in the premises and for damage to the premises if the Insured is the owner thereof or is liable for such damage, provided such loss or damage is caused by:
  - a. Robbery of a Custodian or attempt thereof committed within the premises; or
  - b. Kidnapping, meaning the stealing of such property from within the premises by a person who under the threat of violence compels a custodian while outside the premises to return and admit such person therein, or if forcibly detained elsewhere, to provide information for or means of entry into the premises, provided such loss is the direct result of such acts and occurs prior to the opening of such premises for the regular transaction of business on the next succeeding business day; or
  - c. the stealing of such property from within a show window in the premises while regularly open for business, by a person who has broken the glass thereof from outside the premises, or by an accomplice of such person.

### B. EXCLUSIONS

The Insurer shall not be liable for loss or damage:

1. to plate glass, and lettering, or ornamentation thereon;
2. if the Insured, any associate in interest, a custodian, or any other employee of the Insured directly in charge of the property insured or any guard accompanying a custodian is either a principal or an accessory in effecting or attempting to effect robbery, theft or burglary;
3. unless books and accounts are kept by the Insured in such manner that the Insurer can accurately determine therefrom the amount of loss or damage;
4. caused by riot, and civil commotion;
5. caused directly or indirectly by or contributed to by fire, or occurring during a fire in the building in which the premises are located.

### C. DEFINITIONS

Wherever used in this Form

1. **"Custodian"** means
  - a. the Insured if an individual;
  - b. a member of the firm, if the Insured is a co-partnership;
  - c. any officer of the Insured if the Insured is a corporation;
  - d. any person who is in the regular employ of the Insured and is duly authorized by the Insured to act as paymaster, messenger, collector, driver, cashier, clerk, or sales person, and while so acting to have the care and custody of property insured hereby;
  - e. in no event shall a watchman, janitor, or porter be considered a custodian;
2. **"Forcible Entry"** means

- a. with respect to a chest, safe, or vault entry made by actual force and violence as evidenced by visible marks made by tools, explosives, electricity, gas, or other chemicals;
  - b. with respect to premises, entry made by actual force and violence as evidenced by visible marks made by tools, explosives, electricity, gas, or other chemicals upon, or physical damage to, the exterior of the premises at the place of such entry, and forcible entry shall include forcible exit as evidenced at the place of such exit;
- 3. **"Merchandise"** means only merchandise usual to the business of the Insured described in the Declarations;
  - 4. **"Money"** means only currency, coin, bank notes, and bullion;
  - 5. **"Premises"** means the interior of that portion of the building in the Declarations occupies solely by the Insured in conducting business;
  - 6. **"Robbery"** means the stealing of property from the possession of a custodian;
    - a. by violence or threats of violence to the custodian, used to extort the property stolen or prevent or overcome resistance to the stealing thereof;
    - b. by any other overt criminal act committed in the presence of the custodian and of which the custodian is cognizant at the time;
    - c. who has been killed or disabled by injuries sustained accidentally;
  - 7. **"Securities"** means all negotiable or non-negotiable instruments or contracts representing either money or other property and includes revenue and other stamps in current use, tokens, and tickets, but shall not include money.

## D. TRUSTEE AGREEMENT

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If more than one person or interest is named herein or shall be named hereafter as the Insured,

- 1. the limit of the Insurer shall not exceed the amount of which it would have been liable if only one person or interest had been so named, and
- 2. the Insured whose name first appears in the Declarations is hereby constituted a trustee to act for and represent any and all of the other persons and interests hereby insured, whether designated by name or not.

## E. PROOF OF LOSS AND PROSECUTION

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- 1. Proof of loss under oath on forms provided by the Insurer, in such detail as required by the Insurer, including reasonable evidence of the commission of a robbery, theft or burglary to which the loss or damage was due, particulars of the interest of the Insured and all others in the property in respect of which indemnity is claimed, of the encumbrances thereon and of all other insurance whether valid or not, shall be provided to the Insurer or to the authorized agent or broker through whom the policy was issued, within sixty days from the date of discovery of the loss.
- 2. The Insured upon request of the Insurer
  - a. shall render every assistance to facilitate the investigation and adjustment of any claim, exhibiting for that purpose any and all records, papers, and vouchers bearing in any way upon the claim made and
  - b. shall submit together with all associates in interest and such employees as the Insured may be able to encourage to submit, to the Insurer to secure the arrest and prosecution of the offenders and the recovery of the property.
- 3. In the event of loss for which claim is made the Insured shall, if the Insurer so requests in writing, take legal action at the expense of the Insurer to secure the arrest and prosecution of the offenders and the recovery of the property.

## F. OWNERSHIP OF PROPERTY

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The insured property may be owned by the Insured or held by the Insured in any capacity other than as postmaster or postmistress, whether or not the Insured is liable for such loss or damage as is insured hereby, provided that the Insurer shall not be liable for such damages to the premises unless the Insured is the owner thereof or is liable for such damage thereto.

## A. MERCHANDISE NOT OWNED BY THE INSURED

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In the event of a claim for loss of or damage to property not owned by the Insured, the Insurer may adjust such loss or damage either with the Insured or with the owner of such property and payment of such loss or damage to the Insured or owner shall constitute full satisfaction of the claim. If legal proceedings are taken against the Insured to recover for such loss or damage the Insured shall immediately notify the Insurer in writing and the Insurer shall have the right at its option to conduct and control the defense in the name of and on behalf of the Insured.

## B. VALUATION OF PROPERTY AND REPLACEMENTS

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The Insurer may repair or replace the property damaged or lost with property of like quality or pay for the same in money as the Insurer may elect. In no case shall the Insurer be liable in respect of loss or damage to

1. property other than securities and property held by the Insured as a pledge or as collateral for an advance or loan, for more than the actual cash value thereof determined after due allowance for depreciation at the time the loss or damage was discovered by the Insured.
2. Securities, for more than the cost of an equivalent amount of securities of the same issue purchased by or at the instance of the Insurer; provided however, that if, prior to such purchase by or at the instance of the Insurer, the Insured shall be compelled by the demands of a third party or by market rules, to assume the cost of an equivalent amount of securities of the same issue, and shall notify the Insurer, in writing, of such compulsion, such cost shall be taken as the value of such securities. If the securities cannot be replaced and the value cannot be established it may be determined by agreement or by arbitration;
3. property held by the Insured as a pledge or as collateral for an advance or loan, for more than the value of the property as determined and recorded by the Insured when making the advance or loan. In the absence of such record the liability of the Insurer shall be limited to the unpaid portion of any advance or loan plus accrued interest at legal rates.

## C. INSPECTION AND SUSPENSION

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The Insurer shall be permitted to inspect the premises at any reasonable time. If the Insured fails to carry out recommendations of the Insurer for improvement of the risk, the Insurer may suspend the insurance by written notice. A pro rata refund will be allowed for the period of suspension.

## D. RECOVERIES

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Any property for which the Insurer has paid indemnity shall become the property of the Insurer but the Insured shall be entitled to it upon reimbursing the Insurer the indemnity paid. The party to this contract recovering any such property shall immediately notify the other party in writing.

## E. LOSS CLAUSE

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Loss under any item of this Form shall not reduce the applicable amount of insurance.

## F. SECURITIES

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In the event of loss of securities the Insured shall take all reasonable means to prevent their negotiation, sale, or retirement.



## UNDERWATER INSTRUCTORS PROFESSIONAL LIABILITY INSURANCE

**NOTICE:** THIS IS A CLAIMS MADE INSURANCE FORM. AS SET FORTH BELOW, COVERAGE UNDER THIS INSURANCE APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE PERIOD OF INSURANCE. NOTICE OF CLAIMS MUST BE GIVEN IMMEDIATELY. UPON TERMINATION OF THIS INSURANCE, THERE IS A MAXIMUM NINETY (90) DAY REPORTING PERIOD. PLEASE REVIEW THIS INSURANCE WORDING CAREFULLY.

In consideration of the payment of the premium and in reliance upon the statements in the Insured's application and subject to the insuring agreements, declarations, coverages, definitions, conditions, limitations, warranties, exclusions, endorsements and any other written material contained in the Policy of which this wording forms a part of, the Underwriters agree with the Insured as follows:

### A. INSURING AGREEMENTS

#### 1. COVERAGE - CLAIMS MADE

- a. Subject to the Limit of Liability for Damages, the Underwriters agree to pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as Damages for Bodily Injury and/or Property Damage for Claims arising from an Event caused by any negligent act, error or omission in the rendering of or failure to render Professional Services by an Insured.
- b. This insurance only applies to Claims first made against the Insured during the period of this insurance as shown on the Policy Declarations Page arising from Events occurring subsequent to the retroactive date as shown on the Policy Declarations Page. Claims arising from the same Event made against the Insured over more than one period of insurance shall be deemed to have been made against the Insured during the period of insurance in which the first Claim is made. If during the period of insurance the Insured first becomes aware of and gives written notice to Underwriters of an Event occurring subsequent to the retroactive date likely to give rise to a Claim hereunder, then any subsequent Claim made against the Insured arising from such Event shall be deemed to have been first made during the period of insurance in which the Event was first reported.
- c. If this insurance is not renewed or is canceled then, after termination of the last effective period of insurance, coverage will be provided for Claims arising from Events reported no more than ninety (90) days thereafter, provided that the Event occurred subsequent to the retroactive date and prior to termination of this insurance. After the ninety (90) day period, all coverage shall cease for any Claim arising from any Event which has not been previously reported as specified in this insurance. The ninety (90) day period shall not apply if this insurance is canceled due to non-payment of premium.

#### 2. DEFENSE, SETTLEMENT, SUPPLEMENTARY PAYMENTS

- a. The Underwriters further agree to defend any Claim against the Insured (providing said suit is brought within the Territory) alleging Damages for Bodily Injury and/or Property Damage which are covered and payable under the terms of this insurance, even if any of the allegations of the Claim are groundless, false or fraudulent. The Underwriters shall have the right to make such investigation and settlement of any Claim as deemed expedient and in their sole discretion.

The Underwriters shall not be obligated to pay any Claim after the applicable limit of Liability for Damages has been exhausted by payment of judgments, awards or settlements, or any combination thereof hereunder.

The Underwriters shall not be obligated to defend any Claim after the applicable Limit of Liability for Defense Expenses has been exhausted.

- b. TERRITORY

Territory means worldwide.

- c. DEFENSE EXPENSES

Defense Expenses means:

- (1) All expenses incurred by the Underwriters in defending a Claim, all costs taxed against the Insured in any such suit and all interest on the entire amount of the judgment therein which accrues after the entry of the judgment (post-judgment interest) and before the Underwriters have paid or tendered or deposited to court that part of the judgment which does not exceed the limit of Liability for Damages thereon.

- (2) Premiums on appeal bonds required in any such defended suit provided the counsel retained by the Underwriters has a reasonable belief in the success of an appeal and the Insured can qualify for an appeal for such amounts as shall exceed the Limit of Liability for Damages. The Underwriters shall have no obligation to apply for or furnish an appeal bond.
- (3) All reasonable expenses, other than loss of earnings, incurred by the Insured at the Underwriters' request, and/or reasonable investigatory fees and/or expenses directly incurred by the Insured with Underwriters' prior agreement.

### 3. LIMIT OF LIABILITY

- a. The Limit of Liability for Damages as specified on the Policy Declarations Page is the total limit applicable for any one Event regardless of the number of Claims made as a result of said Event or the number of Insureds against whom Claims have been made. The aggregate limit specified on the Policy Declarations Page is the maximum Underwriters will pay for Damages on Claims made during the annual period of the insurance regardless of the number of Events resulting in Claims made during the period of insurance.
- b. The Limit of Liability for Defense Expenses as specified on the Policy Declarations Page is the total limit applicable for any one Event regardless of the number of Claims made as a result of said Event or the number of Insureds against whom Claims have been made. The aggregate limit specified on the Policy Declarations Page is the maximum Underwriters will pay for Defense Expenses on Claims made during the annual period of the insurance regardless of the number of Events resulting in Claims made during the period of insurance.

## B. ADDITIONAL DEFINITIONS

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### 1. BODILY INJURY

Bodily Injury means Bodily Injury, mental anguish, mental injury, emotional distress only following physical injury sustained by a person.

### 2. CLAIM

Claim means a written demand for Damages received by an Insured, including service of suit.

### 3. DAMAGES

Damages means a compensatory monetary judgment or award (including pre-judgment interest) or settlement entered into with the Underwriters' prior written consent, and does not include:

- a. Defense Expenses;
- b. Punitive or exemplary damages, fines, judicial sanctions, penalties, or any damages which are a multiple of compensatory damages;
- c. The return or restitution of fees, compensation, profits, charges and/or expenses paid to the Insured for services rendered;
- d. Judgments or awards deemed uninsurable by law.

### 4. EVENT

Event means an accident which occurs while the claimant or claimant's decedent is in the water, entering the water, exiting the water or preparing to enter the water in connection with Diving instruction or supervision, including Scuba (self-contained underwater breathing apparatus), snorkeling and swimming.

### 5. INSURED

Each of the following is an Insured under this insurance to the extent set forth below:

- a. The Named Insured shall be the individual identified on the Declarations Page of the Policy.
- b. Any Additional Insured named by endorsement to a Policy.
- c. The heirs, administrators and legal representatives of any Insured if the Insured is dead, incapacitated or bankrupt, but only as respects Professional Services rendered prior to such Insured's death, incapacity or bankruptcy.

The following are not insured under this insurance:

- (1) The employer of an Insured.
- (2) The employee of an Insured.
- (3) Any corporation, partnership or joint venture of which an Insured is a director, officer, partner, joint venturer, stockholder or employee.

### 6. PROFESSIONAL SERVICES

Professional Services means instruction and supervision of scuba diving, snorkeling and swimming only as approved and sanctioned by the diver training associations listed on the Declaration Pages.

## 7. PROPERTY DAMAGE

Property Damage means physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it.

## C. EXCLUSIONS

Coverage is not afforded under this insurance:

1. For any Claim by an Insured against another Insured.
2. For any Claim made by an employer against any Insured who is employed by or representing such employer.
3. For any obligation for which the Insured or any carrier as his/her insurer may be held liable under any worker's compensation law, unemployment compensation or disability benefits law, or under any similar or related law including but not limited to the Jones Act, the U.S. Longshoremen and Harbor Workers Act, the Americans with Disabilities Act, and any civil rights laws or legislation.
4. For Bodily Injury to any employee of the Insured arising out of and in the course of his/her employment by the Insured, including any obligation to indemnify another in whole or in part, for such Bodily Injury.
5. For liability assumed by the Insured under any contract or agreement.
6. For Bodily Injury and/or Property Damage arising out of the ownership, maintenance, operation, use, loading or unloading of any automobile, aircraft or watercraft.
7. For Property Damage to:
  - a. Property owned or occupied by or rented to the Insured;
  - b. Property used by the Insured; or
  - c. Property in the care, custody or control of the Insured or property over which the Insured is for any purpose exercising physical control. (This exclusion does not apply to swimming pools rented by, used by, or occupied by the Named Insured.)
8. For any payments in the nature of fines, judicial sanctions, penalties, punitive and/or exemplary damages or multiples of compensatory damages.
9. For any Claim or Event reported to another insurance company prior to the inception of this insurance.
10. For any Claim arising out of any intentional, willful or deliberate act committed by or at the instigation of the Insured.
11. For any Claim arising out of invasion of privacy, libel, slander or defamation of character, false arrest, detention or imprisonment, assault or battery, or wrongful entry or eviction, including any allegation that the violation of any civil right caused or contributed to such Claim.
12. For any Claim which is directly or indirectly attributable to any failure to comply with any applicable statute, regulation, ordinance, directive or order, provided that the failure to comply is an intentional, willful or deliberate act or omission of the Insured.
13. For any Claim arising out of discrimination by the Insured, including, but not limited to, age, color, race, sex, creed, national origin, marital status, mental or physical disability.
14. For any Claim arising out of infringements of trademark, trade name, patent or copyright.
15. For any Claim based on the insolvency or bankruptcy of any person, firm or organization.
16. For any Claim arising out of the performance of a criminal act or caused by an Insured while under the influence of alcohol, intoxicants, narcotics or any mind-altering substances.
17. For any Claim arising out of or resulting from sexual abuse or harassment or licentious, immoral or sexual behavior, whether or not such act is intended to lead to, or culminate in any sexual act, whether caused by, at the instigation of, at the direction of, or as a result of any act or omission by the Insured, his/her employees, patrons or from any causes whatsoever.
18. For any Claim in any way involving potential or actual transmission of or exposure to Human Immunodeficiency Virus (HIV), hepatitis, or any other infectious disease or any complex or syndrome related thereto, or to any Claim in any way relating to the use or misuse or confidentiality of any information relating to HIV disease, hepatitis, or any other infectious disease, including the failure to disclose the health status of any Insured.
19.
  - a. For any Claim relating to the actual, alleged or threatened discharge, dispersal, release or escape of Pollutants, however caused or whenever or wherever happening.

b. For any request, demand or liability to test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize Pollutants, whether or not any of the foregoing are or should be performed by the Insured or by others.

Pollutants means any electromagnetic transmissions or fields, or any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste, including medical waste. Waste also includes materials to be recycled, reconditioned or reclaimed.

20. For any Claim arising out of any diving activity planned or conducted to a depth in excess of 130 feet or 40 meters.
21. For any Claim arising out of any diving activity conducted using breathing gas mixtures other than compressed air and / or enriched air (EANx / Nitrox).
22. For any Claim arising out of any diving activity conducted using other than open circuit self-contained underwater breathing apparatus (SCUBA) or semi-closed underwater breathing apparatus (semi- closed rebreathers).
23. For any Claim arising from acts other than those specifically approved and sanctioned by the certification organization(s) listed on the declaration page for the Insured in his/her capacity as a swim instructor, lifeguard, skin diving leader, divemaster, instructor, divecon, assistant instructor or sustaining instructor.
24. For any Claim arising from acts other than those specifically approved and sanctioned for the Insured in his/her membership category as defined by the diver certification organization(s) listed on the declaration page.
25. For any Claim arising out of the failure of any product, including Scuba and snorkeling equipment, whether owned or non-owned by an Insured.
26. For any Claim arising out of any commercial or industrial diving activities, including but not limited to welding, construction, salvage, demolition, destruction, repair, maintenance, inspection of vessels or other in water structures, or the collection of organisms for consumption or commercial use.
27. For any Claim arising out of any Event in which the insured left or allowed the uncertified student involved in the claim to be unattended during in-water instruction, tests, or exercises.
28. For any Claim arising out of any Event in which the insured failed to provide the student involved in the claim with direct supervision to the degree required for the specific level of training being provided as defined by the diver certification organization(s) listed on the declaration page.
29. For any Claim arising out of any Event in which the insured failed to obtain a fully completed and signed medical history form from the student involved in the claim prior to any in-water instruction, tests, or exercises; and in the case of a minor the failure to have obtained the minor's parent's or guardian's signatures on the medical history form.
30. For any Claim arising out of any Event in which the medical history form obtained from the student involved in the claim contained contraindications to participation in diving activities and the insured failed to require the student to obtain medical approval, based on a medical examination, from a licensed physician (who is not the student) prior to any in-water instruction, tests, or exercises.
31. For any Claim arising out of any Event involving instruction in which the insured failed to obtain from the student involved in the claim a fully completed and signed release of liability / assumption of risk agreement naming the insured as a released party and developed by or approved by the certification organization through which the training was offered; and in the case of a minor the failure to have obtained the minor's parent's or guardian's signatures on the release of liability / assumption of risk agreement.
32. For any Claim arising out of any Event involving any diving, snorkel or swimming activities in which the insured failed to obtain from the participant involved in the claim a fully completed and signed release of liability / assumption of risk agreement naming the insured as a released party.
33. For any Claim arising out of any Event involving any diving, snorkel or swimming activities in which the insured was not an active member in good standing with their certification organization at the time of the Event.
34. For any Claim arising out of any Event involving instruction in which the insured has failed to maintain records for the purpose of recording the progress of the student involved in the claim.
35. For any Claim arising out of any Event involving instruction in which the insured failed to maintain records for the purpose of evaluating the understanding of the instructional material by the student involved in the claim.
36. For any Claim arising out of any Event in which the insured has failed to maintain all records relating to the student involved in the claim for a minimum of five (5) years.
37. For any Claim arising out of any Event involving any training or supervisory dive conducted by the insured that is planned for depths greater than 100 meters / 330 feet or planned using gas mixes other than compressed air, oxygen, enriched air or tri-mix.
38. For any Claim arising out of any Event involving any training or supervisory dive conducted by the insured that was not in compliance with the standards, procedures and policies of the certification organization that sanctioned the training or diving activity involved.
39. For any Claim arising out of any Event involving the insured's conduct of an introductory experience program (any program designed to introduce uncertified divers to recreational scuba diving via a supervised, controlled open water experience) that was not in compliance with the standards, procedures and policies of the certification organization that sanctioned the training or diving activity involved.

40. For any Claim arising out of any Event involving the insured's conduct of an introductory experience program (any program designed to introduce uncertified divers to recreational scuba diving via a supervised, controlled open water experience) where the participant to Instructor ratio exceeds two to one. This ratio may be increased to four participants per Instructor when the Instructor is assisted by a certified Assistant Instructor or certified Dive Master.
41. For any Claim arising out of any Event involving the insured's conduct of an introductory experience program (any program designed to introduce uncertified divers to recreational scuba diving via a supervised, controlled open water experience) involving participants under the age of 15 where the participant to instructor ratio exceeds one to one.

## D. CONDITIONS

### 1. INSURED'S DUTIES ARISING OUT OF A CLAIM OR EVENT.

- a. As a condition precedent to the protection afforded by this insurance, the Insured shall immediately give to the Underwriters through the designated persons or entity shown on the Policy Declarations Page written notice of every Claim first made against the Insured during the period of this insurance, including, but not limited to, every written demand, notice, summons or other process received by the Insured or his/her representative.
- b. The Insured must also notify Underwriters through the designated persons or entity shown on the Policy Declarations Page as soon as practicable of an Event likely to give rise to a Claim hereunder or of the receipt from any person of an intention to hold the Insured responsible for any Event.

In any such case, the Insured shall, upon request, give the Underwriters such information as the Underwriters in their sole discretion may reasonably require.

### 2. ASSISTANCE AND COOPERATION

The Insured shall cooperate with the Underwriters and, upon the Underwriters' request, assist in making settlements, in the conduct of suits, and in enforcing any rights of contribution or indemnity against any person or organization who may be liable to the Insured because of Bodily Injury or Property Damage with respect to which insurance is afforded hereunder and the Insured shall attend hearings and trials and assist in securing and giving evidence, and obtaining the attendance of witnesses.

### 3. VOLUNTARY PAYMENTS

The Insured shall not voluntarily make any payment, make any admission of responsibility, assume any obligation or incur any expense other than for first aid to others at the time of the Event.

### 4. SUBROGATION CLAUSE

Upon payment under this insurance, the Underwriters shall be subrogated to all the Insured's rights of recovery against any person or organization, and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall do nothing to prejudice such rights.

### 5. OTHER INSURANCE

If other valid and collectible insurance is available to the Insured covering a Claim also covered by this policy, the insurance afforded by this policy shall be in excess of and shall not contribute with such other insurance. Notwithstanding any "other insurance" provision contained in any other valid and collectible insurance available to the Insured, the "other insurance" provision contained herein is controlling, and the Underwriter shall not make any payments under this insurance until the limits of the Insured's other insurance have been exhausted. Subject to the preceding, the insurance afforded hereunder is in excess of and shall not contribute with any other valid and collectible insurance which has been specifically contracted for the Insured or another under any policy in which the Insured is a Named or Additional Insured. Nothing herein shall be construed to make this insurance subject to the terms, definitions, conditions and limitations of the other insurances.

### 6. LEGAL ACTION AGAINST THE UNDERWRITERS

No person or organization has a right under this insurance:

- a. To join the Underwriters as a party or otherwise bring the Underwriters into a suit asking for Damages from any Insured; or
- b. To sue the Underwriters on this insurance unless all of its terms have been fully complied with.

### 7. FALSE OR FRAUDULENT CLAIMS

If the Insured shall give notice of any Claim or reports an Event likely to give rise to a Claim knowing the same to be false or fraudulent, this insurance shall become void and all rights hereunder shall be forfeited by the Insured.

### 8. INSPECTION AND AUDIT

The Underwriters shall be permitted but not obligated to inspect the Named Insured's property, operations or records at any time. Neither the Underwriters' right to make inspections, nor the making thereof, nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the Named Insured or others to determine or warrant that such property or operations are safe or healthful or are in compliance with any law, rule or regulation.

The Underwriters may examine and audit the Named Insured's books and records at any time during the Policy period and extensions thereof and within three years after the final termination of this insurance, as far as they relate to the subject matter of this insurance.

#### **9. CHANGES**

Notice of any Agent or knowledge possessed by any Agent or by any other person shall not effect a waiver or a change in any part of this insurance or stop the Underwriters from asserting any right under the terms of this insurance, nor shall the terms of this insurance be waived or changed, except by endorsement issued to form a part of this insurance signed by an authorized representative of the Underwriters.

#### **10. ASSIGNMENT**

No assignment of interest under this insurance shall be valid unless the written consent of the underwriters is endorsed hereon.

#### **11. APPLICATION**

By acceptance of this insurance, the Named Insured agrees that the statements in the application are his/her representations, that such representations are accurate and complete, that such representations are material to the risk undertaken by the Underwriters in this insurance, and that this insurance is issued and continued in force in reliance upon the truth of such representations.

#### **12. NOTICE OF CANCELLATION**

It is understood and agreed that any Policy may be canceled by the Underwriters by mailing to the holder of such Policy at the address shown in that Policy written notice stating when [not less than thirty (30) days thereafter] such cancellation shall be effective, except in the case of cancellation for non-payment of premium, for which written notice stating when [not less than ten (10) days thereafter] such cancellation shall be effective. The mailing of notice of aforesaid shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of this insurance period. Delivery of such written notice either by the Named Insured or by the Underwriters shall be equivalent to mailing. It is also understood and agreed that the premium applicable to individual Evidences of Insurance issued hereunder are considered fully earned at the inception of such Evidences.

## **EXHIBIT 2**

---

**From:** Peter Meyer <pmeyer@owlunderwriting.com>  
**Sent:** Thursday, August 12, 2021 3:21:16 PM  
**To:** Samuel Ryan <sryan@jkj.com>; Anthony Limburg <alimburg@jkj.com>; Chuck <lv2divenh@yahoo.com>  
**Cc:** Ryan Meyer <rmeyer@owlunderwriting.com>; Robin Melone <rmelone@wadleighlaw.com>  
**Subject:** Dive Facility Insurance renewal FD001261 (PS Dive Shop, LLC DBA Portsmouth Scuba)

## **This is a notice of cancellation of Policy FD001261**

Gentlemen, the above noted policy is being cancelled under the policy provisions for cancellation with 30 days notice. Effective September 11, 2021 this policy will be cancelled in its entirety, with pro-rata premium return. Our formal endorsement is attached.

### **Earned / Return Premium**

As per the attached endorsement, the Earned Premium is \$1308.29 and the Return Premium is \$7355.87

### **Claims Made coverage reporting period**

Please note that Section IV Underwater Liability is a Claims Made form and requires that any and all incidents that may be covered, and occurring within the policy period, be reported within 90 days of the policy expiry date. That means that any and all incidents occurring within the policy period do need to be reported within 90 days of the cancellation date, September 11, 2021. After 90 days all coverage will cease for non-reported incidents.

As per New Hampshire Insurance regulations we are obliged to offer an extended reporting period for claims Made coverage and can offer a 365 day extension of the reporting period for a flat additional premium of \$1900.00 if desired. Please contact us if you wish to explore this option.

### **Reason for Cancellation**

Our investigation of the Cianchette incident (PS Dive Shop, LLC DBA Portsmouth Scuba / B0180MA1903105 / FD001261 / Tonya Cianchette) has revealed breaches of PADI Training standards, and certain terms and conditions of the policy, which we feel are contrary to the intent of the coverage provided (I.E. the insured agreed in the application for coverage to follow all PADI Standards and obtain appropriate waivers and medical clearance as required). As a result we are choosing to terminate this policy under the policy cancellation provisions.

This cancellation does not affect any obligation of underwriters to respond to the Cianchette matter, nor any other ongoing claim(s), which have been, or may be, reported under the policy, as per policy terms and conditions. First Dive have no authority with respect to coverage for the Cianchette matter.

We trust you understand the reason for this cancellation, however, please feel free to contact the undersigned with any questions at all.

Best regards.



Peter Meyer

Office: 604-409-8094 Ext: 102

Cell: 604-250-1849

Please note our new phone numbers.

This e-mail message is confidential, for the exclusive use of the addressee.

Any unauthorized disclosure, use or dissemination, either whole or partial, is prohibited.

If you are not the intended recipient of the message, please notify the sender immediately by return e-mail



**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
SUPERIOR COURT**

Hillsborough Superior Court Northern District  
300 Chestnut Street  
Manchester NH 03101

Telephone: 1-855-212-1234  
TTY/TDD Relay: (800) 735-2964  
<http://www.courts.state.nh.us>



**SUMMONS IN A CIVIL ACTION**

**PS Dive Shop LLC, et al v Sonya Melissa Tirey, personal representative of the  
Estate of Tonya Tirey Cianchette, et al**  
Case Name: **Estate of Tonya Tirey Cianchette, et al**  
Case Number: **216-2021-CV-00623**

Date Complaint Filed: September 24, 2021

A Complaint has been filed against Hiscox Dedicated Corporate Member Ltd; Sonya Melissa Tirey, personal representative of the Estate of Tonya Tirey Cianchette in this Court. A copy of the Complaint is attached.

**The Court ORDERS that ON OR BEFORE:**

November 28, 2021	Charles Oxendine; PS Dive Shop LLC shall have this Summons and the attached Complaint served upon Hiscox Dedicated Corporate Member Ltd; Sonya Melissa Tirey, personal representative of the Estate of Tonya Tirey Cianchette by in hand or by leaving a copy at his/her abode, or by such other service as is allowed by law.
December 19, 2021	Charles Oxendine; PS Dive Shop LLC shall electronically file the return(s) of service with this Court. Failure to do so may result in this action being dismissed without further notice.
30 days after Defendant is served	Hiscox Dedicated Corporate Member Ltd; Sonya Melissa Tirey, personal representative of the Estate of Tonya Tirey Cianchette must electronically file an Appearance and Answer or other responsive pleading form with this Court. A copy of the Appearance and Answer or other responsive pleading must be sent electronically to the party/parties listed below.

**Notice to Hiscox Dedicated Corporate Member Ltd; Sonya Melissa Tirey, personal representative of the Estate of Tonya Tirey Cianchette:** If you do not comply with these requirements you will be considered in default and the Court may issue orders that affect you without your input.

**Send copies to:**

Gretchen M. Wade, ESQ  
Tierney M Chadwick, ESQ  
Sonya Melissa Tirey, personal  
representative of the Estate of  
Tonya Tirey Cianchette  
Hiscox Dedicated Corporate  
Member Ltd

Wadleigh Starr & Peters PLLC 95 Market St Manchester NH 03101  
Wadleigh Starr & Peters PLLC 95 Market St Manchester NH 03101  
58 Wedgewood Drive Saco ME 04072

96 Pitts Bay Road Pembroke Hamilton Bermuda

**BY ORDER OF THE COURT**

October 14, 2021

W. Michael Scanlon  
Clerk of Court

**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
SUPERIOR COURT**

Hillsborough Superior Court Northern District  
300 Chestnut Street  
Manchester NH 03101

Telephone: 1-855-212-1234  
TTY/TDD Relay: (800) 735-2964  
<http://www.courts.state.nh.us>

**CHARLES OXENDINE; PS DIVE SHOP LLC  
INSTRUCTIONS FOR SERVICE  
BY THE SHERIFF'S DEPARTMENT**

Case Name: **PS Dive Shop LLC, et al v Sonya Melissa Tirey, personal representative of the Estate of Tonya Tirey Cianchette, et al**  
Case Number: **216-2021-CV-00623**

**Instructions for: Charles Oxendine; PS Dive Shop LLC**

The attached Summons must be sent to the Sheriff's Department for service. Service must be completed on or before **November 28, 2021**.

**Further action is required by you**

**You must:**

- Print two copies of the Summons per defendant
- Print two copies of the Notice to Defendant per defendant
- Print two copies of the Complaint filed with the Court per defendant
- Make two packets for service. Each packet should contain:
  - One Summons
  - Once Notice for Defendant
  - One Complaint filed with the Court
- Mail or hand deliver the packets to the Sheriff's Department in the county where each defendant resides.

**Sheriff Departments in New Hampshire:**

[Belknap County Sheriff's Department:](#)

[Carroll County Sheriff's Department:](#)

[Cheshire County Sheriff's Department:](#)

[Coos County Sheriff's Department:](#)

[Grafton County Sheriff's Department:](#)

[Hillsborough County Sheriff's Department:](#)

[Merrimack County Sheriff's Department:](#)

[Rockingham County Sheriff's Department:](#)

[Strafford County Sheriff's Department:](#)

[Sullivan County Sheriff's Department:](#)

**\*If one or more of the parties resides out of state, please click [here](#) for the requirements\***

Service must be made upon the defendant before **November 28, 2021**.

If the Sheriff is unable to complete service by **November 28, 2021** you will receive a "Notice of Incomplete Service" from the Sheriff's Department. You may request that new paperwork be issued by electronically filing a Request for Documents. There is a fee for this request.

The Sheriff will mail the 'Return of Service' to you. You **MUST** electronically file the 'Return of Service' with the court by December 19, 2021.

**If service is not made as directed, no further action will occur and the case may be dismissed by the court.**

## Important Service Information for Sheriff

Do not file this with the court

Provide this information to the Sheriff's Department.

See Instructions for Service for more information.

**PLEASE PRINT CLEARLY**

Date: \_\_\_\_\_

Case #: \_\_\_\_\_

**Who are you requesting to be served?**

Please provide whatever information you know

Name: \_\_\_\_\_

Address for service (no P.O. boxes):

\_\_\_\_\_ APT #: \_\_\_\_\_

\_\_\_\_\_

Home phone #: \_\_\_\_\_ Cell phone #: \_\_\_\_\_

Sex: ☐ Male ☐ Female Race: \_\_\_\_\_

Last 4 digits of SS#: xxx-xx- \_\_\_\_\_ D.O.B. \_\_\_\_\_

Work name & address:

\_\_\_\_\_

Special instructions for service (i.e. directions, best time to serve, cautions, etc.):

\_\_\_\_\_

\_\_\_\_\_

Vehicle description/license plate:

\_\_\_\_\_

**Your Information:**

Name (please print): \_\_\_\_\_

Residential address:

\_\_\_\_\_

\_\_\_\_\_

Mailing address:

\_\_\_\_\_

\_\_\_\_\_

Phone number to contact you during business hours:

\_\_\_\_\_ Alternate #: \_\_\_\_\_

\_\_\_\_\_  
Signature

◆IN-HAND SERVICE WILL INCUR EXTRA COSTS DUE TO ADDITIONAL TRAVEL◆

**SHERIFF OFFICE USE ONLY: (This will vary by Sheriff's Office)**

Fees Paid: \$ \_\_\_\_\_ Cash #: \_\_\_\_\_ Check#: \_\_\_\_\_

Id#: \_\_\_\_\_ Waiver: \_\_\_\_\_ Money Order#: \_\_\_\_\_ Credit Card: \_\_\_\_\_

Sheriff File # \_\_\_\_\_ Authorization #: \_\_\_\_\_

Instructions for filing the Return of Service:

If you are working with an attorney, they will guide you on the next steps. If you are going to represent yourself in this action, go to the court's website: [www.courts.state.nh.us](http://www.courts.state.nh.us), select the Electronic Services icon and then select the option for a self-represented party.

1. Select "I am filing into an existing case". Enter 216-2021-CV-00623 and click Next.
2. When you find the case, click on the link follow the instructions on the screen. On the "What would you like to file?" screen, select "File Other Document" and choose "Return of Service".
3. Scan the Return of Service packet and follow the instructions in the electronic filing program to upload the Return of Service to complete your filing.
4. If the sheriff was unable to serve the paperwork, you can request new paperwork by filing a Request for Documents. On the "What would you like to file?" screen, select "File Other Document" and choose "Request for Reissued Summons" from the menu and upload the Request for Documents form.

**FAILURE TO FILE THESE DOCUMENTS MAY RESULT IN YOUR CASE BEING DISMISSED.**

October 14, 2021

Date

W. Michael Scanlon

Clerk of Court

You can access documents electronically filed through our Case Access Portal by going to <https://odypa.nhecourt.us/portal> and following the instructions in the User Guide. In that process you will register, validate your email, request access and approval to view your case. After your information is validated by the court, you will be able to view case information and documents filed in your case.

**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
SUPERIOR COURT**

Hillsborough Superior Court Northern District  
300 Chestnut Street  
Manchester NH 03101

Telephone: 1-855-212-1234  
TTY/TDD Relay: (800) 735-2964  
<http://www.courts.state.nh.us>

**NOTICE TO DEFENDANT**

**PS Dive Shop LLC, et al v Sonya Melissa Tirey, personal representative  
of the Estate of Tonya Tirey Cianchette, et al**  
Case Name: **216-2021-CV-00623**  
Case Number:

You have been served with a Complaint which serves as notice that this legal action has been filed against you in the **Hillsborough Superior Court Northern District**. Review the Complaint to see the basis for the Plaintiff's claim.

Each Defendant is required to electronically file an Appearance and Answer 30 days after service. You may register and respond on any private or public computer. For your convenience, there is also a computer available in the courthouse lobby.

If you are working with an attorney, they will guide you on the next steps. If you are going to represent yourself in this action, go to the court's website: [www.courts.state.nh.us](http://www.courts.state.nh.us), select the Electronic Services icon and then select the option for a self-represented party.

1. Complete the registration/log in process. Click Register and follow the prompts.
2. After you register, click Start Now. Select **Hillsborough Superior Court Northern District** as the location.
3. Select "I am filing into an existing case". Enter **216-2021-CV-00623** and click Next.
4. When you find the case, click on the link and follow the instructions on the screen. On the "What would you like to file?" screen, select "File a Response to Civil Complaint". Follow the instructions to complete your filing.
5. Review your Response before submitting it to the court.

**IMPORTANT:** After receiving your response and other filings the court will send notifications and court orders electronically to the email address you provide.

A person who is filing or defending against a Civil Complaint will want to be familiar with the Rules of the Superior Court, which are available on the court's website: [www.courts.state.nh.us](http://www.courts.state.nh.us).

Once you have registered and responded to the summons, you can access documents electronically filed by going to <https://odypa.nhecourt.us/portal> and following the instructions in the User Guide. In that process you will register, validate your email, request access and approval to view your case. After your information is validated by the court, you will be able to view case information and documents filed in your case.

If you have questions regarding this process, please contact the court at 1-855-212-1234.

## THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS  
NORTHERN DISTRICTSUPERIOR COURT  
JURY TRIAL DEMANDED  
216-2021-CV-00623PS DIVE SHOP, LLC d/b/a PORTSMOUTH SCUBA and  
CHARLES OXENDINE

v.

FIRSTDIVE INSURANCE d/b/a OWL UNDERWRITING AGENCY, INC. and  
SONYA MELISSA TIREY, Personal Representative of the Estate of TONYA TIREY  
CIANCHETTE**COMPLAINT FOR DECLARATORY JUDGMENT****INTRODUCTION**

Plaintiffs, PS Dive Shop, LLC, d/b/a Portsmouth Scuba, (“Dive Shop”), and Charles Oxendine by their Attorneys, bring this action for declaratory judgment seeking the Court’s determination as to whether their commercial general liability insurer, FirstDive Insurance d/b/a/ OWL Underwriting Agency, Inc. (hereinafter “FirstDive Insurance”) owes defense and indemnity to the Plaintiffs in connection with a personal injury claim that is anticipated to be filed against them in the State of Maine by the Defendant Sonya Melissa Tirey, Personal Representative of the Estate of Tonya Tirey Cianchette. The Plaintiffs were formally put on notice on June 18, 2021 that Sonya Melissa Tirey, Personal Representative of the Estate of Tonya Cianchette intends to pursue a claim against them in connection with her death. Upon receiving the notice, the plaintiffs provided notice to their insurer of the claim.

On September 16, 2021, attorneys for the Plaintiffs received correspondence from counsel for the insurer setting forth a “Reservations of Rights” in which they stated that they did not believe that coverage existed for the Claim under the Policy.

### **PARTIES**

1. Plaintiff PS Dive Shop LLC d/b/a Portsmouth Scuba is a limited liability corporation organized and existing under the laws of the State of New Hampshire and has a principal place of business at 915 Sagamore Avenue, Portsmouth, NH USA.

2. Plaintiff Charles Oxendine is the owner of PS Dive Shop LLC d/b/a Portsmouth Scuba who purchased the relevant insurance policy at issue and resides at 731 Beech St, Manchester, NH 03104.

3. Defendant FirstDive Insurance d/b/a OWL Underwriting is a corporation organized and existing under the laws of British Columbia, Canada and has a principal place of business at 1477 West Pender Vancouver, BC, Canada V6G2S3.

4. Defendant Sonya Melissa Tirey, Personal Representative of the Estate of Tonya Tirey Cianchette, upon information and belief, is an individual residing in Maine.

### **JURISDICTION AND VENUE**

5. Plaintiffs brings this Declaratory Judgment action pursuant to N.H. Rev. Stat. Ann. § 491:22 to redress their rights. This Court has jurisdiction over the subject matter in this action pursuant to N.H. Rev. Stat. Ann. § 491:7.

6. Venue is proper under N.H. Rev. Stat. Ann. § 507:9 because the Plaintiff Charles Oxendine resides in Manchester, New Hampshire located in Hillsborough County.

### **SUMMARY OF THE CLAIM**

7. This is an action for declaratory judgment pursuant to N.H. Rev. Stat. Ann. §491:22 for the purpose of determining the question, as hereinafter more fully appears, of whether Defendant FirstDive is required to provide coverage under the FirstDive Insurance Policy, FD001261, to Plaintiffs (hereinafter “Policy”).

8. Declaratory judgment is proper because the Plaintiffs are seeking a final determination with respect to the existence of insurance coverage from its insurer.

9. Although no suit has been brought, a notice of claim was received by the Plaintiffs on or about June 18, 2021, and Plaintiffs promptly notified their insurer on or about June 23, 2021 upon receipt. Nearly three months after putting their insurer on notice of the potential claim, Plaintiffs received a “Reservation of Rights” letter on September 16, 2021.

10. Plaintiffs’ action for declaratory judgment is timely under the six-month statutory requirement. N.H. Rev. Stat. Ann. §491:22 (III).

11. Plaintiffs contend that coverage should exist under the policy at issue and that the defendant FirstDive Insurance shall provide defense and indemnity in connection with the claim anticipated to be filed in the State of Maine by Defendant Tirey.

12. The policy at issue contains five (5) sections of coverage set forth on the declarations page: Section 1: Building and Personal Property; Section II: Commercial General Liability; Section III: Crime; Section IV: Underwater Liability; Section V: Dive Travel E&O. (See *Commercial General Liability Policy*, attached hereto as Exhibit 1).

13. The relevant section of the policy at issue in connection with the claim is Section IV: Underwater Liability.

14. Beginning at page 66 of the policy, Section IV is entitled “Underwater Instructors Professional Liability Insurance”.

15. The policy provides, in pertinent part, “Subject to the Limit of Liability for Damages, the Underwriters agree to pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as Damages for Bodily Injury and/or Property Damage for Claims arising from an Event caused by ***any negligent act, error or omission*** in the rendering of or failure to render Professional Services by an Insured.”

(Emphasis added)

16. Notwithstanding this language, the policy goes on to provide a total of **forty-one (41) exclusions** for such coverage. (*Exhibit 1, pg. 68-70*)

17. The Policy should be found to be illusory as a whole because these exclusions provide illusory liability coverage in a specialized policy which was reasonably understood to provide insurance for claims associated with owning and operating a dive shop and offering scuba diving courses.

18. Furthermore, there are multiple policy exclusions which are ambiguous in total and should be read in favor of the insured.

19. In addition, Defendant FirstDive, through its agent, led Plaintiffs to believe that coverage termination did not affect the “Cianchette matter” and that he had insurance coverage for this claim.

### **STATEMENT OF FACTS**

20. The insurance Policy at issue, policy no. FD001261 (“the Policy”) provided by Defendant First Dive went into effect on July 18, 2020, and expired July 18, 2021.

21. The Policy provides coverage in Section IV for underwater liability, which includes Form FD-UW0001 “Underwater Instructors Professional Liability – CLAIMS MADE COVERAGE” which is described as “applies to diving instruction and supervision only as approved and sanctioned by the training agencies listed on the Schedule of Dive Staff and subject to the terms, limits and conditions of this Policy. (See *Exhibit 1*, pg. 3). Plaintiff Charles Oxendine is listed on the Schedule of Dive Staff (See *Exhibit 1*, pg. 5).

22. The claim anticipated to be filed by Defendant Tirey as Personal Representative for the Estate of Tonya Tirey Cianchette is in connection with a scuba diving accident that occurred on August 30, 2020, when Plaintiff Charles Oxendine (“Instructor Oxendine”) was providing diving instruction and supervision under the terms of the policy.

23. On August 28, 2020, Instructor Oxendine had met with students, Ms. Tonya Tirey Cianchette and Mr. Isaac Takushi at the dive shop and went over the deep

water navigation book chapters and knowledge reviews in preparation for their dive on August 30, 2020.

24. On August 30, 2020, Instructor Oxendine was teaching students on a training scuba dive to obtain their Advanced Open Water Certification from PADI®.

25. The plan was to perform a navigation dive and a deep water dive but not to exceed a depth of 70 feet.

26. Advanced Open Water certification is only available after a scuba diver has previously obtained (and maintained) certification as a “PADI® Open Water Diver.”

27. In order to obtain the certification as an Advanced Open Water Diver, each student must complete 15 hours of classroom training before performing two skills dives and three electives.

28. On August 30, 2020, Instructor Oxendine was taking Defendant Tirey’s decedent, Tonya Tirey Cianchette with another student, Mr. Takushi to complete two of the dives needed for their certification.

29. Instructor Oxendine, Mr. Takushi, and Ms. Cianchette descended to 40’ together with their hands locked. Shortly after reaching their planned depth, Instructor Oxendine noticed he was out of air, he dropped his weight on the bottom, and signaled for Mr. Takushi and Ms. Cianchette to surface.

30. Both Mr. Takushi and Ms. Cianchette surfaced with Instructor Oxendine but all of them became caught in a surface current. Instructor Oxendine swam to a nearby buoy and instructed Mr. Takushi and Ms. Cianchette to swim to him. Mr.

Takushi was pulled into the buoy by Instructor Oxendine, but Ms. Cianchette was too far away to be pulled in.

31. Ms. Cianchette was alert and responsive upon reaching the surface and was communicating verbally with Mr. Takushi and Instructor Oxendine at that time.

32. Instructor Oxendine signaled the boat to pull anchor and drive to their location to pick them up.

33. Ms. Cianchette struggled to swim against the current to stay in the area of Instructor Oxendine and Mr. Takushi and is believed to have said she would go under the surface to swim back to the buoy.

34. It was later learned that Ms. Cianchette must have proceeded to dive down once again. This is based upon the finding that her downloaded dive profile showed that Ms. Cianchette dove ultimately to a depth of 90.8' for approximately four minutes. Then she ascended rapidly in less than 30 seconds.

35. Upon information and belief, as the boat proceeded towards Instructor Oxendine and Mr. Takushi at the buoy, the boat captain saw that Ms. Cianchette was floating at the surface.

36. The boat picked up Ms. Cianchette first while the other recreational divers in the water joined Instructor Oxendine and Mr. Takushi at the buoy while linked together on the surface.

37. When the boat found Ms. Cianchette she was pulled abroad unresponsive and later pronounced dead at Portsmouth Regional Hospital. Cause of death was "barotrauma."

**COUNT I**

**DECLARATORY JUDGMENT**

38. The Plaintiffs incorporate by reference all preceding paragraphs as if expressly stated herein.

39. PS Dive Shop, LLC d/b/a Portsmouth Scuba seeks a determination that there is insurance coverage available under the Policy for the death of Ms. Cianchette as it relates to the events of August 30, 2020, despite the policy having forty-one (41) exclusions.

40. Plaintiffs obtained an insurance policy containing coverages for commercial general liability and professional liability from a diving insurance company. This was a specialized policy for businesses associated with scuba diving.

41. Plaintiffs were not aware that within such policy that contained forty-one (41) exclusions, there laid traps of exposure to liability because the Policy rested on the notion that coverage did not extend outside of the parameters of the PADI ® textbooks and the organizations' teachings and/or policies. (See Exhibit 1, Exclusions No. 23, 24, 28, 33 and 38, pg. 69).

42. Furthermore, the coverage being offered was illusory in that there are two further exclusions that require the insured to obtain liability waivers in order for coverage to be provided. (See Exhibit 1, Exclusions No. 31 and 32).

43. It was reasonable of Plaintiffs to understand that by purchasing a specialty insurance, the Policy would cover claims that would arise under the conditions with which a dive shop business operates.

44. “The obligation of an insured to read an insurance policy is not obviated unless the policy is so constructed that a reasonable man in the position of the insured would not attempt to read it.” Croteau v. John Hancock Mut. Life Ins. Co., 461 A.2d 111, 113–14 (N.H. 1983) (internal quotations omitted). A seventy (70) page commercial general liability and professional liability policy with forty-one (41) exclusions of coverage for professional liability is not going to be readily understood by a reasonable man. “When such a policy is involved, the insured may rely on the representations of the agent or even solely on his own understanding of the insurance he is purchasing, as long as that reliance is reasonable.” Storms v. U. S. Fid. & Guar. Co., 388 A.2d 578, 580 (N.H. 1978).

45. This policy was not interpreted by Plaintiffs to carve out endless situations that hadn’t been contemplated to occur to distinguish when coverage may exist.

46. Furthermore, Plaintiffs’ reasonable understanding was that this policy protected the dive shop and dive instructors’ liability, and it was for this reason that they purchased “specialty” insurance.

47. An illusory promise is when “[w]ords of promise which by their terms make performance entirely optional with the ‘promisor’ do not constitute a promise.” Restatement (Second) of Contracts § 77 (1981). “[A]n exclusion that “completely swallows” coverage is not the same as one that takes a nibble, or even a big bite, out of it.” Travelers Indem. Co. of Connecticut v. Richard McKenzie & Sons, Inc., No. 18-13172, 2021 WL 3777537, at \*8 (11th Cir. Aug. 26, 2021). “A provision in an insurance policy that negates the very coverage that the policy purports to provide in the

circumstances where the person is liable is void as against public policy.” Liberty Mut. Ins. Co. v. Tabor, 553 N.E.2d 909, 912 (Mass. 1990) (a car insurance policy that does not cover negligent acts of a driver nullifies coverage in the exact situation where the driver-insured would be liable.).

48. The reason for the Dive Shop to have professional liability insurance coverage in the first place is for protection should an instructor breach the standard of care or cause injury to those they are instructing.

49. While the coverage alleges to exist for “any negligent act, error or omission in the rendering of or failure to render Professional Services by an Insured” the exclusions within the policy itself ensure that any such negligence won’t be afforded coverage.

50. However, in this instance, any breach in the standard of care set forth by PADI® nullifies coverage according to numerous exclusions within the policy.

51. Plaintiffs could not be expected to understand based on the ambiguity within the language used within the various exclusions that failure to follow any one of the innumerable PADI® standards or procedures could effectively negate coverage for an accident.

52. Insurance is a means to protect oneself from liability when a breach of the standard of care occurs. To fail to provide insurance based upon a breach of a standard of care runs counter to the essence of what an insurance policy provides to the insured when it purports to offer coverage for “any negligent act, error or omission...”

53. The Policy's Exclusions referencing the various standards as "those specifically approved and sanctioned by the certification organization..." or "developed by and approved by the certification organization" is ambiguous and should be read in favor of the insured as providing coverage under the policy because to read otherwise would create an illusory policy.

54. Plaintiffs reasonably believed that their Dive Policy would cover claims associated with diving and running a scuba diving business. Thus, a Dive Shop Policy with forty-one (41) exceptions is illusory as it affords little to no benefit to Plaintiffs for the payment of their insurance premiums.

55. The interpretation of insurance policy language is a question of law for courts to decide. Colony Ins. Co. v. Dover Indoor Climbing Gym, 974 A.2d 399, 401 (N.H. 2009).

56. Also buried within the forty-one (41) exclusions of the Policy at No. 31 and 32 are requirements that the Dive Shop obtain liability waivers.

57. Exclusion No. 31 says that for ..."any Event involving instruction"...in which the insured failed to obtain from the student involved ... "fully completed and signed release of liability / assumption of risk agreement naming the insured as a released party".... "developed by or approved by the certification organization through which the training was offered;..."

58. The language within this exclusion is clearly ambiguous because it could be interpreted that such release of liability must be something provided by PADI® and/or that the dive shop would need to get approval from PADI® to use.

59. Yet, the next exclusion, No. 32 says that any claim arising out of “any Event” involving “any diving, snorkel or swimming activities in which the insured failed to obtain from the participant involved in the claim a fully completed and signed release of liability/assumption of risk agreement naming the insured as a released party.”

60. One could argue that nearly all activities of the dive shop include diving, snorkel or swimming activities and as such, is entirely ambiguous as to which activities requires which type of release of liability.

61. Based upon the language, it appears as though “instruction” requires one type of waiver and “diving” requires a different waiver.

62. This is the exact type of ambiguity that must not be permitted by an insurer within its insurance policies.

63. “Although an insurer has a right to contractually limit the extent of its liability, it must do so ‘through clear and unambiguous policy language.’” Colony, 974 A.2d 399, 401 (N.H. 2009) (quoting Curtis, 566 A.2d 176, 176 (N.H. 1989)).

64. In New Hampshire, the burden of proving that no insurance coverage exists rests squarely with the insurer. N.H. Rev. Stat. Ann. § 491:22-a; see Curtis v. Guar. Tr. Life Ins. Co., 566 A.2d 176, 178 (N.H. 1989). “The court will honor the reasonable expectations of the policyholder’ in determining the amount of coverage” when reviewing an insurance policy as a whole. Id. at 179 (quoting Andrews v. Nationwide Mut. Ins. Co., 124 N.H. 148, 153 (1983)).

65. If an ambiguous policy provision has two meanings, and one favors the policyholder, “the ambiguity will be construed against the insurer.” Colony, 974 A.2d

399, 401 (N.H. 2009); see also Laconia Rod & Gun Club v. Hartford Acc. and Indem. Co., 459 A.2d 249, 251 (N.H. 1983) (insurance policy was ambiguous in how the phrase “in the business of” applied to a gun club that served alcohol.). The reasonable expectations of the insured are considered when the policy is ambiguous. Id.

66. In addition to the ambiguity contained within the clauses requiring releases of liability, the fact that the policy is seeking to exclude coverage for failure to obtain releases of liability is yet another example of the illusory nature of this policy. The policy purports to provide coverage for professional liability, but buried within the policy at page 69 is a carve-out for the insurer to avoid having to provide any coverage whatsoever. This exclusion should be void as against public policy.

67. If an exclusion within an insurance policy is “complete nonsense,” then the policy becomes illusory. Lincoln Nat’l Health & Cas. Ins. Co. v. Brown, 782 F.Supp. 110, 112–13 (M.D.Ga.1992); see also, Lineberry v. State Farm Fire & Cas. Co., 885 F. Supp. 1095, 1099 (M.D. Tenn. 1995) (coverage for invasion of the right of privacy, but exclusion for intentional torts provides illusory coverage.).

68. Reasonable expectations of insurance coverage can also be implicated based off an insurance agent’s manifestations to the policy holder. Trefethen v. New Hampshire Ins. Group, 645 A.2d 72 (N.H. 1994). When a store owner said he wanted to be covered “for everything” the agent responded that coverage would be provided. Id. at 73. The plaintiffs’ reasonable expectations of coverage were upheld based on his prior dealings with the insurance agent despite clear and unambiguous policy language. Id. at 715.

69. Here, Defendant FirstDive/ Owl underwriting agent Peter Meyer e-mailed Instructor Oxendine on August 12, 2021 notifying him that coverage for his 2021-2022 policy had been cancelled effective as of September 11, 2021. The Cianchette incident was the reason why insurance was being terminated, but in bold at the bottom of the e-mail it read, **[t]his cancellation does not affect any obligation of underwriters to respond to the Cianchette matter, nor any other ongoing claim(s), which have been, or may be, reported under the policy, as per policy terms and conditions.** (See Exhibit 2.)

70. Plaintiffs reasonably believed based on this language by insurance agent Peter Meyer that his insurance company would be accepting defense and indemnity for the “Cianchette matter” despite his policy being terminated. Plaintiffs read this statement to mean that even though they would not provide coverage in the future, the Defendant FirstOwl was providing coverage under his policy with respect to the claim.

71. At the time that Plaintiff Oxendine received this email on August 12, 2021, Plaintiffs still had not heard from the insurance company regarding the notice of claim sent on June 23, 2021.

72. It was not until a month later on September 16, 2021, that the Reservation of Rights letter was sent to Plaintiffs.

### **CONCLUSION**

73. Accordingly, coverage is available – and is not otherwise excluded – under the Policy, Defendant FirstDive’s denial of coverage is wrongful, and Defendant

FirstDive must provide defense and indemnity to Plaintiffs in connection with any lawsuit brought by Defendant Tirey, in connection with the incident on August 30, 2020.

WHEREFORE, the Plaintiff, PS Dive Shop, LLC d/b/a Portsmouth Scuba, respectfully requests that this Honorable Court:

- A. Declare that FirstDive Insurance is obligated to provide coverage under the Policy for any suit brought against the Plaintiffs in connection with the accident involving Ms. Cianchette that occurred on August 30, 2020;
- B. Award Defendants PS Dive Shop, LLC d/b/a Portsmouth Scuba and Charles Oxendine their reasonable attorney's fees and costs incurred herein pursuant to RSA 491:22-a; and
- C. Grant such further relief as its just and proper.

Respectfully submitted,

PS DIVE SHOP, LLC D/B/A PORTSMOUTH  
SCUBA and  
CHARLES OXENDINE

By their attorneys:

WADLEIGH, STARR & PETERS, PLLC

Dated: September 24, 2021

By: /s/ Tierney M. Chadwick  
Tierney M. Chadwick, NH Bar # 21010  
Gretchen M. Wade, NH Bar #273726  
95 Market Street  
Manchester, NH 03101  
(603) 669-4140  
[tchadwick@wadleighlaw.com](mailto:tchadwick@wadleighlaw.com)  
[gwade@wadleighlaw.com](mailto:gwade@wadleighlaw.com)

## **EXHIBIT 1**



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

#### **CORONAVIRUS EXCLUSION**

**Your** Insurance Policy does not / This Insurance does not cover any claim in any way caused by or resulting from:

- a) Coronavirus disease (COVID-19);
- b) Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);
- c) any mutation or variation of SARS-CoV-2;
- d) any fear or threat of a), b) or c) above.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Date Issued: 2020-07-15



## Dive Facility Insurance

Effectuated with certain Lloyd's Underwriters (hereinafter called the "Insurer") through  
**OWL UNDERWRITING AGENCY INC.**

### Policy Declarations

The insurance contract consists of these Declarations pages as well as all coverage wordings, riders or endorsements that are attached hereto.

Insurance is provided only for those coverages for which a specific Limit of Insurance is shown – on terms and conditions contained in the forms indicated.

<b>UMR:</b> B0180MA1903105	<b>Agency Code</b> APSCUBA001
<b>Agency:</b> Assured Partners SCUBA 840 Crescent Centre Dr Suite #300, Franklin, TN 37067	
<b>New</b> <input type="checkbox"/> <b>Renewal</b> <input checked="" type="checkbox"/>	
<b>Named Insured</b> PS Dive Shop, LLC DBA Portsmouth Scuba	<b>Policy Number</b> FD001261
<b>Mailing Address</b> 49 Tirrell Rd Bedford, NH 03110	<b>Effective Date</b> 2020-07-18 <b>Expiry Date</b> 2021-07-18
<b>Location of Risk</b> 915 Sagamore Ave Portsmouth, NH USA	Beginning and Ending 12:01AM standard time at the mailing address of the insured
<b>Description of Operations</b> Dive Facility including dive cylinder fills, sponsored dive trips, dive related products sold, repaired and rented.	
<b>Endorsement</b> <input type="checkbox"/> <b>Effective Date of Change:</b>	
<b>Description:</b>	

The Insured is requested to read this Declarations Page and if it is not correct, return it immediately to Assured Partners SCUBA for appropriate alteration. All inquiries regarding this Declarations Page should be addressed to the following correspondent: info@scubains.com

### Attached to and Forming Part of the Policy

LSW1135B	Lloyd's Privacy Policy Statement	LMA3100	Sanction Limitation & Exclusion Clause
LSW1001	Several Liability Notice Clause	NMA2918	War and Terrorism Exclusion Clause
CL355	Institute Service of Suit Clause (USA)	CL380	Institute Cyber Attack Exclusion Clause
CL370	Institute Radioactive Contamination, Chemical, Biological, Bio-Chemical and Electromagnetic Weapons Exclusion Clause		
LMA5389	U.S. Terrorism Risk Insurance Act of 2002 as amended – New and Renewal Business Endorsement		
FD-SC0010	Certificate Holders Endorsement		

### Section I

#### Buildings & Personal Property

If coverage is afforded for more than one location, a separate schedule will be provided on page 4 of this document breaking down the covered limits by location.

Forms	Coverages	Limit	Deductible*	Basis of Loss Settlement	Premium
FD-CP0010	Building & Personal Property Coverages Buildings	NOT COVERED	NOT COVERED		NOT COVERED
	Personal Property	\$239,000.00	\$1,000.00		\$1,664.16
	Glass	\$1,000/pane	\$250.00		INCLUDED
	Outdoor Signs	\$10,000.00	\$1,000.00		INCLUDED
	Customers Goods	\$20,000.00	\$1,000.00		INCLUDED
FD-CP1030 FD-CP0725	Causes of Loss – Special Form Wave Action Sublimit Mechanical Breakdown	NOT COVERED NOT COVERED	NOT COVERED NOT COVERED		NOT COVERED NOT COVERED
FD-CP0032 NMA2915	Business Income (Without Extra Expense) Including "Rental Value" Electronic Data Endorsement B	NOT COVERED	NOT COVERED		NOT COVERED INCLUDED
FD-CP0090 FDPX-0009 FD-PX1500	Commercial Property Conditions SJC Mold Exclusion Monitored Alarm Requirement – Conditions Precedent				INCLUDED INCLUDED INCLUDED
				<b>Total</b>	<b>\$1,664.16</b>

\*Coverages listed in Section I are subject to **A SEPARATE DEDUCTIBLE FOR LOSSES RESULTING FROM THE PERIL OF WINDSTORM** which shall read as follows in respect of either Buildings or Contents or Business Income: 5% of insured value subject to a minimum of \$3,500. If more than one location is scheduled, the deductible will apply to each location separately. In the event that two or more deductibles are showing for a specific coverage, the deductible is agreed to be the higher of either the percentage indicated of the insured value at the location or the minimum deductible amount. Unless otherwise indicated, the co-insurance percentage is agreed at 90%.

**Section II****Commercial General Liability**

Forms	Coverages		Deductible	Limit	Premium
FD-GL0001	Commercial General Liability Coverage Form Each Occurrence Annual Aggregate – Products/Completed Operations General Aggregate Personal & Advertising Injury Premises Medical Payments – Per Person -Per Event Fire Legal Liability – Each Occurrence		NIL	\$2,000,000.00 \$2,000,000.00 \$3,000,000.00 \$2,000,000.00 \$5,000 \$10,000 \$2,000,000.00	\$1,906.78 INCLUDED INCLUDED INCLUDED INCLUDED INCLUDED INCLUDED
FD-GL0419	Hired Auto and Non-Owned Auto Liability		\$1,000	\$1,000,000	INCLUDED
FD-GL2407	Products / Completed Operations Hazard Redefined				INCLUDED
FD-LX0011	Exclusion - Designated Professional Services				INCLUDED
FD-LX0012	Absolute Auto, Aircraft & Watercraft Exclusion				INCLUDED
FD-LX0001	Immune Deficiency Exclusion				INCLUDED
FD-LX1560	Punitive or Exemplary Damages Exclusion				INCLUDED
FD-LX1590	Diving Boards – Exclusion				INCLUDED
FD-LX1650	Assault & Battery Exclusion				INCLUDED
FD-LX2101	Athletic Sports Participants Exclusion				INCLUDED
FD-LX0009	SJC Mold Exclusion				INCLUDED
				<b>Total</b>	\$1,906.78

**Section III****Crime**

Forms	Coverages		Deductible	Limit	Premium
FD-CR1000	Crime General Provisions				
FD-CR1500	Employee Dishonesty		\$500	\$5,000	INCL.
FD-CR2000	Outside Robbery (Hold-Up)		\$500	\$1,000	INCL.
	Inside Robbery (Hold-Up)		\$500	\$1,000	INCL.

**Section IV****Underwater Liability**

Forms	Coverages	Deductible	Limit	Premium
FD-UW0001	Underwater Instructors Professional Liability - CLAIMS MADE COVERAGE. Retroactive Date: 2019-07-18			
	Per Claim Limit Annual Aggregate including Defense Expenses	NIL	\$2,000,000.00 \$3,000,000.00	\$1,900.00
FD-UW0002	Technical Endorsement A	NIL	NOT COVERED	NOT COVERED
FD-UW0003	Technical Endorsement B	NIL	NOT COVERED	NOT COVERED
	Applies to Diving Instruction and Supervision only as approved and sanctioned by the training agencies listed on the Schedule of Dive Staff and subject to the terms, limits and conditions of this policy. 90 Day Discovery Period Applies			
Schedule of Covered Dive Staff Attached				
			Total	\$1,900.00

**Section V****Dive Travel E&O**

Forms	Coverages	Deductible	Limit	Premium
FD-DT0001	Dive Travel Organizer Professional Liability – CLAIMS MADE COVERAGE. Retroactive Date:			
	Per Claim Limit Annual Aggregate	NOT COVERED	NOT COVERED	NOT COVERED
	90 Day Discovery Period			

**Loss Payable:**

<b>Premium</b>	\$5,470.94
<b>+ Policy Fee</b>	\$200.00
<b>State/Provincial Taxes</b>	
NH state tax	\$170.13
<b>Total Premium</b>	\$5,841.07
<b>Broker Commission</b>	15%
Minimum Retained Premium – 25%	

In consideration of the premium specified and the statements contained in the Policy Declarations and subject to all the terms and conditions of this Policy and Schedules and Endorsements attached thereto, the insurer agrees to insure the Named Insured, subject to the applicable limits of Insurance or amounts or insurance contained herein, for the specified term.

In the event of claim, please notify the following: Assured Partners SCUBA at info@scubains.com or 615-251-7941

**PER:**

**DATE ISSUED:** 2020-07-15



## **SCHEDULE OF DIVE STAFF**

Dive Staff must be in active status with their Dive Training Agency(s) for coverage to apply

Name	Training Agency	Certification Number
Chad Law	PADI	374406
Dick Scott	PADI	421422
Stephen Faria	PADI	400476
Charles Oxendine	PADI	287587
Jen Minuti	PADI	450674
Stan Simmons	PADI	080450
Daniel Bolduc	PADI	176580

**"The company issuing this policy has not been licensed by the state of New Hampshire and the rates charged have not been approved by the commissioner of insurance. If the company issuing this policy becomes insolvent, the New Hampshire insurance guaranty fund shall not be liable for any claims made against the policy."**

## SCHEDULE OF INSURERS

In respect of: Section III (a) + (b): G – Gen Liab

Effected with:

48.7460%	Lloyd's Syndicate HIS 0033
7.3858%	Lloyd's Syndicate AES 1225
18.0180%	Lloyd's Syndicate AUL 1274
25.8502%	Lloyd's Syndicate SCC 1301
100%	Total placed heron, in respect of the above order

In respect of: Section II: 6T – TRIA

Effected with:

48.7460%	Lloyd's Syndicate HIS 0033
7.3858%	Lloyd's Syndicate AES 1225
18.0180%	Lloyd's Syndicate AUL 1274
25.8502%	Lloyd's Syndicate SCC 1301
100%	Total placed heron, in respect of the above order

In respect of: Section II: B3 – Comm Prop (USA)

Effected with:

48.7460%	Lloyd's Syndicate HIS 0033
7.3858%	Lloyd's Syndicate AES 1225
18.0180%	Lloyd's Syndicate AUL 1274
25.8502%	Lloyd's Syndicate SCC 1301
100%	Total placed heron, in respect of the above order

In respect of: Section III (c): GC – Prof Liab

Effected with:

48.7460%	Lloyd's Syndicate HIS 0033
7.3858%	Lloyd's Syndicate AES 1225
18.0180%	Lloyd's Syndicate AUL 1274
25.8502%	Lloyd's Syndicate SCC 1301
100%	Total placed heron, in respect of the above order



## LLOYD'S PRIVACY POLICY STATEMENT

### UNDERWRITERS AT LLOYD'S, LONDON

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The Certain Underwriters at Lloyd's, London want you to know how we protect the confidentiality of your non--public personal information. We want you to know how and why we use and disclose the information that we have about you. The following describes our policies and practices for securing the privacy of our current and former customers.

### INFORMATION WE COLLECT

---

The non-public personal information that we collect about you includes, but is not limited to:

- Information contained in applications or other forms that you submit to us, such as name, address, and social security number
- Information about your transactions with our affiliates or other third-parties, such as balances and payment history
- Information we receive from a consumer-reporting agency, such as credit-worthiness or credit history

### INFORMATION WE DISCLOSE

---

We disclose the information that we have when it is necessary to provide our products and services. We may also disclose information when the law requires or permits us to do so.

### CONFIDENTIALITY AND SECURITY

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Only our employees and others who need the information to service your account have access to your personal information. We have measures in place to secure our paper files and computer systems.

### RIGHT TO ACCESS OR CORRECT YOUR PERSONAL INFORMATION

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You have a right to request access to or correction of your personal information that is in our possession.

### CONTACTING US

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If you have any questions about this privacy notice or would like to learn more about how we protect your privacy, please contact the agent or broker who handled this insurance. We can provide a more detailed statement of our privacy practices upon request.

Date Issued: 2020-07-15



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

**SANCTION LIMITATION AND EXCLUSION CLAUSE**

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment or such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanction, laws or regulations of the European Union, United Kingdom or United States of America.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Date Issued: 2020-07-15



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

**SEVERAL LIABILITY NOTICE / CLAUSE**

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Date Issued: 2020-07-15



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

**WAR AND TERRORISM EXCLUSION CLAUSE**

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

1. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
2. any act of terrorism.

For the purpose of this endorsement an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to 1. and/or 2. above.

If the Insurers allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Insured.

In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

Date Issued: 2020-07-15



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

**SERVICE OF SUIT CLAUSE (U.S.A.)**

It is agreed that in the event of the failure of the Underwriters severally subscribing this insurance (the underwriters) to pay any amount claimed to be due hereunder, the Underwriters, at the request of the Assured, will submit to the jurisdiction of a court of competent jurisdiction within the United States of America

Notwithstanding any provision elsewhere in this insurance relating to jurisdiction, it is agreed that the Underwriters have the right to commence an action in any court of competent jurisdiction in the United States of America, and nothing in this clause constitutes or should be understood to constitute a waiver of the Underwriters' rights to remove an action to a United States Federal District Court or to seek remand therefrom or to seek a transfer of any suit to any other court of competent jurisdiction as permitted by the laws of the United States of America or any state therein.

Subject to the Underwriters' rights set forth above:

- a) It is further agreed that the Assured may serve process upon any senior partner in the firm of:

Lloyd's America, Inc. Attention: Legal Department, 280 Park Avenue, East Tower, 25<sup>th</sup> Floor, New York, NY 10017

And that in any suit instituted against any one of them upon this contract the Underwriters will abide by the final decision of the Court or of any Appellate Court in the event of an appeal.

- b) The above-named are authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of the Assured to give a written undertaking to the Assured that they will enter a general appearance upon the Underwriters' behalf in the event such a suit shall be instituted.
- c) The right of the Assured to bring suit as provided herein shall be limited to a suit brought in its own name and for its own account. For the purpose of suit as herein provided the word Assured includes any mortgagee under a ship mortgage which is specifically named as a loss payee in this insurance and any person succeeding to the rights of any such mortgagee.
- d) Further, pursuant to any statute or any state, territory or district of the United States of America which makes provision therefor, Underwriters hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office (the Officer), as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Assured or any beneficiary hereunder arising out of this contract of insurance, and hereby designate the above-named as the person to whom the Officer is authorized to mail such process or a true copy thereof.

If this clause is attached to a contract of reinsurance the terms of insurance and Assured shall mean reinsurance and Reassured respectively.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

**INSTITUTE CYBER ATTACK EXCLUSION CLAUSE**

1.1 Subject only to clause 1.2 below, in no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from the use or operations, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.

1.2 Where this clause is endorsed on policies covering risks of war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or terrorism or any persona acting from a political motive, Clause 1.1 shall not operate to exclude losses (which would otherwise be covered) arising from the use of any computer, computer system or computer software programme or any other electronic system in the launch and/or guidance system and / or firing mechanism of any weapon or missile.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

Date Issued: 2020-07-15



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

**INSTITUTE RADIOACTIVE CONTAMINATION, CHEMICAL, BIOLOGICAL, BIOCHEMICAL  
AND ELECTROMAGNETIC WEAPONS EXCLUSION CLAUSE**

This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith

1. In no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from

1.1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel

1.2 the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof

1.3 any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter

1.4 the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes

1.5 any chemical, biological, bio-chemical, or electromagnetic weapon.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

Date Issued: 2020-07-15



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261  
Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

**U.S. TERRORISM RISK INSURANCE ACT OF 2002 AS AMENDED**

**NEW & RENEWAL BUSINESS ENDORSEMENT**

This Endorsement is issued in accordance with the terms and conditions of the "U.S. Terrorism Risk Insurance Act of 2002" as summarized in the disclosure notice.

In consideration of an additional premium of US\$ \_\_\_\_\_ INCLUDED \_\_\_\_\_ paid, it is hereby noted and agreed with effect from inception that the Terrorism exclusion to which this Insurance is subject, shall not apply to any "insured loss" directly resulting from any "act of terrorism" as defined in the "U.S. Terrorism Risk Insurance Act of 2002", as amended ("TRIA").

The coverage afforded by this Endorsement is only in respect of any "insured loss" of the type insured by this Insurance directly resulting from an "act of terrorism" as defined in TRIA. The coverage provided by this Endorsement shall expire at 12:00 midnight December 31, 2027, the date on which the TRIA Program is scheduled to terminate, or the expiry date of the policy whichever occurs first, and shall not cover any losses or events which arise after the earlier of these dates. The Terrorism exclusion, to which this Insurance is subject, applies in full force and effect to any other losses and any act or events that are not included in said definition of "act of terrorism".

This Endorsement only affects the Terrorism exclusion to which this Insurance is subject. All other terms, conditions, insured coverage and exclusions of this Insurance including applicable limits and deductibles remain unchanged and apply in full force and effect to the coverage provided by this Insurance.

Furthermore the Underwriter(s) will not be liable for any amounts for which they are not responsible under the terms of TRIA (including subsequent action of Congress pursuant to the Act) due to the application of any clause which results in a cap on the Underwriter's liability for payment for terrorism losses.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

Date Issued: 2020-07-15



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

### **CERTIFICATE HOLDER ENDORSEMENT**

It's hereby noted and agreed that any entity to which a Certificate of Insurance has been issued under this policy is also an Additional Insured. The additional insured protection is strictly limited in scope and applies only to the liability of these Entities arising vicariously out of or attributable to the operations of the **Named Insured** to which this policy applies.

This Endorsement does not extend coverage to any Entity for liability attributable to or allegations made against said Entity for his/her/its own conduct.

This Endorsement and the coverage provided herein is subject to all of the terms, provisions, agreements, definitions, exclusions, limitations, conditions, and warranties contained in the Policy to which it is attached.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

Date Issued: 2020-07-15



## BUILDING AND PERSONAL PROPERTY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us", and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to SECTION H - DEFINITIONS.

### A. COVERAGE

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

#### 1. Covered Property.

Covered Property, as used in this Coverage Part, means the following types of property for which a Limit of Insurance is shown in the Declarations:

- a. **Building**, meaning the building or structure described in the Declarations, including:
  - (1) Completed additions;
  - (2) Permanently installed;
    - (a) Fixtures;
    - (b) Machinery; and
    - (c) Equipment;
  - (3) Outdoor fixtures;
  - (4) Personal property owned by you that is used to maintain or service the building or structure or its premises, including:
    - (a) Fire extinguishing equipment;
    - (b) Outdoor furniture;
    - (c) Floor coverings; and
    - (d) Appliances used for refrigerating, ventilating, cooking, dishwashing, or laundering;
  - (5) If not covered by other insurance:
    - (a) Additions under construction, alteration and repairs to the building or structure;
    - (b) Materials, equipment, supplies, and temporary structures, on or within 100 feet of the described premises, used for making additions, alterations or repairs to the building or structure.
- b. **Your Business Personal Property** located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises, consisting of the following unless otherwise specified in the Declarations or on the Your Business Personal Property - Separation of Coverage form:
  - (1) Furniture and fixtures;
  - (2) Machinery and equipment;
  - (3) "Stock";
  - (4) All other personal property owned by you and used in your business;
  - (5) Labor, materials or services furnished or arranged by you on personal property of others;
  - (6) Your use interest as tenant in improvements and betterments. Improvements and betterments are fixtures, alterations, installations or additions:
    - (a) Made a part of the building or structure you occupy but do not own; and
    - (b) You acquired or made at your expense but cannot legally remove;
  - (7) Leased personal property for which you have a contractual responsibility to insure, unless otherwise provided for under Personal Property of Others.
- c. **Personal Property of Others** that is:
  - (1) In your care, custody, or control; and,
  - (2) Located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises.

However, our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

#### 2. Property Not Covered .

Covered Property does not include:

- a. Accounts, bills, currency, deeds, food stamps or other evidences of debt, money, notes or securities. Lottery tickets held for sale are not securities;
- b. Animals, unless owned by others and boarded by you, or if owned by you, only as "stock" while inside of buildings;
- c. Automobiles held for sale;
- d. Bridges, roadways, walks, patios or other paved surfaces;
- e. Contraband, or property in the course of illegal transportation or trade;
- f. The cost of excavations, grading, backfilling or filling;
- g. Foundations of buildings, structures, machinery or boilers if their foundations are below:
  - (1) The lowest basement floor; or
  - (2) The surface of the ground, if there is no basement;
- h. Land (Including land on which the property is located), water, growing crops or lawns;
- i. Personal Property while airborne or waterborne;
- j. Pilings, piers, wharves or docks;
- k. Property that is covered under another coverage form of this or any other policy in which it is more specifically described, except for the excess of the amount due (whether you can collect on it or not) from that other insurance;
- l. Retaining walls that are not part of the building described in the Declarations;
- m. Underground pipes, flues or drains;
- n. The cost to research, replace or restore the information on valuable papers and records, including those which exist on electronic or magnetic media, except as provided in the Coverage Extensions;
- o. Vehicles or self-propelled machines (including aircraft or watercraft) that:
  - (1) Are licensed for use on public roads; or
  - (2) Are operated principally away from the described premises.

This paragraph does not apply to:

- (a) Vehicles or self-propelled machines or autos you manufacture, process or warehouse;
- (b) Vehicles or self-propelled machines, other than autos, you hold for sale; or
- (c) Rowboats or canoes out of water at the described premises;
- p. The following property while outside of buildings:
  - (1) Grain, hay, straw or other crops;
  - (2) Fences, radio or television antennas, including their lead-in wiring, masts or towers, signs (other than signs attached to buildings), trees, shrubs or plants (other than "stock" of trees, shrubs or plants), all except as provided in the Coverage Extensions.

### 3. Covered Causes of Loss.

See applicable Causes of Loss Form as shown in the Declarations.

### 4. Additional Coverages.

#### a. Debris Removal.

- (1) We will pay your expense to remove debris of Covered Property caused by or resulting from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.
- (2) The most we will pay under this Additional Coverage is 25% of:
  - (a) The amount we pay for the direct physical loss of or damage to Covered Property; plus
  - (b) The deductible in this policy applicable to that loss or damage.

But this limitation does not apply to any additional debris removal limit provided in the Limits of Insurance section.

- (3) This Additional Coverage does not apply to costs to:
  - (a) Extract "pollutants" from land or water; or
  - (b) Remove, restore or replace polluted land or water.

#### b. Preservation of Property.

If it is necessary to move Covered Property from the described premises to preserve it from loss or damage by a Covered Cause of Loss, we will pay for any direct physical loss or damage to that property.

- (1) While it is being moved or while temporarily stored at another location; and
- (2) Only if the loss or damage occurs within 10 days after the property is first moved.

#### c. Fire Department Service Charge.

When the fire department is called to save or protect Covered Loss, we will pay up to \$1,000 for your liability for fire department service charges:

- (1) Assumed by contract or agreement prior to loss; or
- (2) Required by local ordinance.

No Deductible applies to this Additional Coverage.

#### d. Pollutant Clean Up and Removal.

We will pay your expense to extract "pollutants" from land or water at the described premises if the discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 60 days of the date on which the Covered Cause of Loss occurs.

This Additional Coverage does not apply to costs to test for, monitor or assess the existence, concentration or effects of "pollutants". But we will pay for testing which is performed in the course of extracting the "pollutants" from the land or water.

The most we will pay under this Additional Coverage for each described premises is \$10,000 for the sum of all covered expenses arising out of Covered Causes of Loss occurring during each separate 12 month period of this policy.

## 5. Coverage Extensions.

Except as otherwise provided, the following Extensions apply to property located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises.

If a Coinsurance percentage of 80% or more or, a Value Reporting period symbol, is shown in the Declarations, you may extend the insurance provided by this Coverage Part as follows:

### a. Newly Acquired or Constructed Property.

- (1) You may extend the insurance that applies to Building to apply to:
  - (a) Your new buildings while being built on the described premises; and
  - (b) Buildings you acquire at locations, other than the described premises, intended for:
    - (i) Similar use as the building described in the Declarations: or
    - (ii) Use as a warehouse.

The most we will pay for loss or damage under this Extension is 25% of the Limit of Insurance for Building shown in the Declarations, but not more than \$250,000 at each building.

- (2) You may extend the insurance that applies to Your Business Personal Property to apply to that property at any location you acquire other than at fairs or exhibitions.

The most we will pay for loss or damage under this Extension is 10% of the Limit of Insurance for Your Business Personal Property shown in the Declarations, but not more than \$100,000 at each building.

- (3) Insurance under this Extension for each newly acquired or constructed property will end when any of the following first occurs:
  - (a) this policy expires.
  - (b) 30 days expire after you acquire or begin to construct the property; or
  - (c) You report values to us.

We will charge you additional premium for values reported from the date construction begins or you acquire the property.

### b. Personal Effects and Property of Others.

You may extend the insurance that applies to Your Business Personal Property to apply to:

- (1) Personal effects owned by you, your officers, your partners or your employees. This extension does not apply to loss or damage by theft.
- (2) Personal property of others in your care, custody or control.

The most we will pay for loss or damage under this Extension is \$2,500 at each described premises. Our payment for loss or damage to personal property of others will only be for the account of the owner of the property.

### c. Valuable Papers and Records - Cost of Research.

You may extend the insurance that applies to Your Business Personal Property to apply to your costs to research, replace or restore the lost information on lost or damaged valuable papers and records, including those which exist on electronic or magnetic media, for which duplicates do not exist. The most we will pay under this Extension is \$1,000 at each described premises.

### d. Property Off-Premises.

You may extend the insurance provided by this Coverage Form to apply to your Covered Property, other than "stock", that is temporarily at a location you do not own, lease or operate. This Extension does not apply to Covered Property:

- (1) In or on a vehicle;
- (2) In the care, custody or control of your salespersons; or
- (3) At any fair or exhibition.

The most we will pay for loss or damage under this Extension is \$5,000.

### e. Outdoor Property.

You may extend the insurance provided by this Coverage Form to apply to your outdoor fences, radio and television antennas, signs (other than signs attached to buildings), trees, shrub and plants (other than "stock" of trees, shrubs or plants), including debris removal expense, caused by or resulting from any of the following causes of loss if they are Covered Causes of Loss:

- (1) Fire;
- (2) Lightning;
- (3) Explosion;
- (4) Riot or Civil Commotion; or
- (5) Aircraft.

The most we will pay for loss or damage under this Extension is \$1,000, but not more than \$250 for any one tree, shrub or plant.

Each of these Extensions is additional insurance. The Additional Condition, Coinsurance, does not apply to these Extensions.

## B. EXCLUSIONS

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See applicable Causes of Loss Form as shown in the Declarations.

## C. LIMITS OF INSURANCE

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The most we will pay for loss or damage in any one occurrence is the applicable Limit of Insurance shown in the Declarations.

The most we will pay for loss or damage to outdoor signs attached to buildings is \$1,000 per sign in any one occurrence unless another limit is indicated in the Declarations.

The limits applicable to the Coverage Extensions and the Fire Department Service Charge and Pollutant Clean Up and Removal Additional Coverages are in addition to the Limits of Insurance.

Payments under the following Additional Coverages will not increase the applicable Limit of Insurance:

1. Preservation of Property; or
  2. Debris Removal; but if
    - a. The sum of direct physical loss or damage and debris removal expense exceeds the Limit of Insurance; or
    - b. The debris removal expense exceeds the amount payable under the 25% limitation in the Debris Removal Additional Coverage;
- We will pay up to an additional \$5,000 for each location in any one occurrence under the Debris Removal Additional Coverage.

## D. DEDUCTIBLE

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We will not pay for loss or damages in any one occurrence until the amount of loss or damage exceeds the Deductible shown in the Declarations. We will then pay the amount of loss or damage in excess of the Deductible, up to the applicable Limit of Insurance, after any deduction required by the Coinsurance condition or the Agreed Value Optional Coverage.

## E. LOSS CONDITIONS

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The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

### 1. Abandonment

There can be no abandonment of any property to us.

### 2. Appraisal.

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

### 3. Duties In The Event Of Loss Or Damage.

- a. You must see that the following are done in the event of loss or damage to Covered Property:
  - (1) Notify the police if a law may have been broken.
  - (2) Give us prompt notice of the loss or damage. Include a description of the property involved.
  - (3) As soon as possible, give us a description of how, when and where the loss or damage occurred.
  - (4) Take all reasonable steps to protect the Covered Property from further damage by a Covered Cause of Loss. If feasible, set the damaged property aside and in the best possible order for examination. Also keep a record of your expenses for emergency and temporary repairs, for consideration in the settlement of this claim. This will not increase the Limit of Insurance.
  - (5) At our request, give us complete inventories of the damaged and damaged property. Include quantities, costs, values and amount of loss claimed.
  - (6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records. Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.
  - (7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
  - (8) Cooperate with us in the investigation or settlement of the claim.
- b. We may examine any insured under oath, while not in the presence of any other insured and at times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

**4. Loss Payment.**

- a. In the event of loss or damage covered by this Coverage Form, at our option, we will either:
  - (1) Pay the value of lost or damaged property;
  - (2) Pay the cost of repairing or replacing the lost or damaged property;
  - (3) Take all or any part of the property at an agreed or appraised value; or
  - (4) Repair, rebuild, or replace the property with other property of like kind and quality.
- b. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.
- c. We will not pay you more than your financial interest in the Covered Property.
- d. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.
- e. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
- f. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, if:
  - (1) You have complied with all of the terms of this Coverage Part; and
  - (2)
    - (a) We have reached agreement with you on the amount of loss; or
    - (b) An appraisal award has been made.

**5. Recovered Property.**

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

**6. Vacancy.**

If the building where loss or damage occurs has been vacant for more than 60 consecutive days before that loss or damage, we will:

- a. Not pay for any loss or damage caused by any of the following even if they are Covered Causes to Losses.
  - (1) Vandalism;
  - (2) Sprinkler leakage, unless you have protected the system against freezing;
  - (3) Building glass breakage;
  - (4) Water damage;
  - (5) Theft; or
  - (6) Attempted theft.
- b. Reduce the amount we would otherwise pay for the loss or damage by 15%.

A building is vacant when it does not contain enough business personal property to conduct customary operations.

Buildings under construction are not considered vacant

**7. Valuation.**

We will determine the value of Covered Property in the event of loss or damage as follows:

- a. At actual cash value at the time of loss or damage, except as provided in b., c., d., e. and f. below
- b. If the Limit of Insurance for Building satisfies the Additional Condition, Coinsurance, and the cost to repair or replace the damaged building property is \$2,500 or less, we will pay the cost of building repairs or replacement.  
This provision does not apply to the following even when attached to the building:
  - (1) Vandalism;
  - (2) Awnings or floor coverings;
  - (3) Appliances for refrigerating, ventilating, cooking, dishwashing, or laundering; or
  - (4) Outdoor equipment or furniture.
- c. "Stock" you have sold but not delivered at the selling price less discounts and expenses you otherwise would have had.
- d. Glass at the cost of replacement with safety glazing material if required by law.
- e. Tenant's Improvements and Betterments at:
  - (1) Actual cash value of the lost or damaged property if you make repairs promptly.
  - (2) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:
    - (a) Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and
    - (b) Divide the amount determined in (a) above by the number of days from the installation of improvements to the expiration of the lease. If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.
  - (3) Nothing if others pay for repairs or replacement.
- f. Valuable Papers and Records, including those which exist on electronic or magnetic media (other than prepackaged software programs), at the cost of:
  - (1) Blank materials for reproducing the records; and
  - (2) Labor to transcribe or copy the records when there is a duplicate.

## F. ADDITIONAL CONDITIONS

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

### 1. Coinsurance.

If a Coinsurance percentage is shown in the Declarations, the following conditions apply.

- a. We will not pay the full amount of any loss if the value of Covered Property at the time of loss times the Coinsurance percentage shown for it in the Declarations is greater than the Limit of Insurance for the property.

Instead, we will determine the most we will pay using the following steps:

- (1) Multiply the value of Covered Property at the time of loss by the Coinsurance percentage;
- (2) Divide the Limit of Insurance of the property by the figure determined in step (1);
- (3) Multiply the total amount of loss, before the application of any deductible, by the figure determined in step (2); and
- (4) Subtract the deductible from the figure determined in step (3)

We will pay the amount determined in step (4) or the limit of insurance, whichever is less. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

#### Example No.1 (Underinsurance):

When:

The value of the property is	\$250,000
The Coinsurance Percentage for it is	80%
The Limit of Insurance for it is	\$100,000
The Deductible is	\$250
The amount of loss is	\$40,000

Step (1):  $\$250,000 \times 80\% = \$200,000$  (the minimum amount of insurance to meet your Coinsurance requirements)

Step (2):  $\$100,000 / \$200,000 = .50$

Step (3):  $\$40,000 \times .50 = \$20,000$

Step (4):  $\$20,000 - \$250 = \$19,750$

We will pay no more than \$19,750. The remaining \$20,250 is not covered.

#### Example No. 2 (Adequate Insurance):

When:

The value of the property is	\$250,000
The Coinsurance Percentage for it is	80%
The Limit of Insurance for it is	\$200,000
The Deductible is	\$250
The amount of loss is	\$40,000

Step (1):  $\$250,000 \times 80\% = \$200,000$  (the minimum amount of insurance to meet your Coinsurance requirements)

Step (2):  $\$200,000 / \$200,000 = 1.00$

Step (3):  $\$40,000 \times 1.00 = \$40,000$

Step (4):  $\$40,000 - \$250 = \$39,750$

We will cover the \$39,750 loss in excess of the Deductible. No penalty applies.

If one Limit of Insurance applies to two or more separate items, this condition will apply to the total of all property to which the limit applies.

#### Example No. 3:

When:

The value of the property is	Building at Location 1:	\$ 75,000
	Building at Location 2:	\$100,000
	Personal Property at Location 2:	\$ 75,000
The Coinsurance Percentage for it is		90%
The Limit of Insurance for Building and		
Personal Property at Location Nos. 1 and 2 is:		
		\$180,000
The Deductible is		\$1,000
The amount of loss is	Building at Location No. 2:	\$ 30,000
	Personal Property at Location No. 2:	\$ 20,000

Step (1):  $\$250,000 \times 90\% = \$225,000$  (the minimum amount of insurance to meet your Coinsurance requirements and to avoid the penalty below)

Step (2):  $\$180,000 / \$225,000 = .80$

Step (3):  $\$50,000 \times 0.80 = \$40,000$

Step (4):  $\$40,000 - \$1,000 = \$39,000$

We will pay no more than \$39,000. The remaining \$11,000 is not covered.

### 2. Mortgage Holders.

- a. The term "mortgage holder" includes trustee.
- b. We will pay for covered loss of or damage to buildings or structures to each mortgage holder shown in the Declarations in their order of precedence, as interests may appear.
- c. The mortgage holder has the right to receive loss payment even if the mortgage holder has started foreclosure or similar action on the building or structure.
- d. If we deny your claim because of your acts or because you failed to comply with the terms of this Coverage Part, the mortgage holder will still have the right to receive loss payment if the mortgage holder:
  - (1) Pays any premium due under this Coverage Part at our request if you have failed to do so;
  - (2) Submits a signed, sworn statement of loss within 60 days after receiving notice from us of your failure to do so;
  - (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgage holder.

All of the terms in this Coverage Part will then apply directly to the mortgage holder.

- e. If we pay the mortgage holder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:
  - (1) The mortgage holder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
  - (2) The mortgage holder's right to recover the full amount of the holder's claim will not be impaired.

At our option, we may pay to the mortgage holder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

- f. If we cancel this policy, we will give written notice to the mortgage holder at least:
  - (1) 10 days before the effective date of cancellation if we cancel for your non-payment of premium; or
  - (2) 30 days before the effective date of cancellation if we cancel for any other reason.
- g. If we elect not to renew this policy, we will give written notice to the mortgage holder at least 10 days before the expiration date of this policy.

## G. OPTIONAL COVERAGES

If shown in the Declarations, the following Optional Coverages apply separately to each item.

### 1. Agreed Value.

- a. The Additional Condition, Coinsurance, does not apply to Covered Property to which this Optional Coverage applies. We will pay no more for loss of or damage to that property than the proportion that the Limit of Insurance under this Coverage Part for the property bears to the Agreed Value shown for it in the Declarations.
- b. If the expiration date for this Optional Coverage shown in the Declarations is not extended, the Additional Condition, Coinsurance, is restated and this Optional Coverage expires.
- c. The terms of this Optional Coverage apply only to loss or damage that occurs:
  - (1) On or after the effective date of this Optional Coverage; and
  - (2) Before the Agreed Value expiration date shown in the Declarations or the policy expiration date, whichever occurs first.

### 2. Inflation Guard.

- a. The Limit of Insurance for property for which this Optional Coverage applied will automatically increase by the annual percentage shown in the Declarations.
- b. The amount of increase will be:
  - (1) The Limit of Insurance that applied on the most recent of the policy inception date, the policy anniversary date, or any other policy change amending the Limit of Insurance, times
  - (2) The percentage of annual increase shown in the Declarations, expressed as a decimal (example: 8% is .08), times
  - (3) The number of days since the beginning of the current policy year of the most recent policy change amending the Limit of Insurance divided by 365.

Example:

If:

The applicable Limit of Insurance is \$100,000

The annual percentage increase is 8%

The number of days since the beginning of the policy year (or last policy change) is 146

The amount of increase is  $x .08 \times 146 / 365 =$  \$3,200

### 3. Replacement Cost.

- a. Replacement Cost (without deduction for depreciation) replaces Actual Cash Value in the Loss Condition, Valuation, of this Coverage Form.
- b. This Optional Coverage does not apply to:
  - (1) Property of others;
  - (2) Contents of a residence;
  - (3) Manuscripts;
  - (4) Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac; or
  - (5) "Stock" unless the Including "Stock" option is shown in the Declarations.

- c. You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of replacement cost basis. In the event you elect to have loss or damage settled on actual cash value basis, you may still make a claim for the additional coverage this Optional Coverage provides if you notify us of your intent to do so within 180 days after the loss or damage.
- d. We will not pay on a replacement cost basis for any loss or damage:
  - (1) Until the lost or damaged property is actually repaired or replaced; and
  - (2) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.
- e. We will not pay more for loss or damage on a replacement cost basis than the least of:
  - (1) The Limit of Insurance applicable to the lost or damaged property;
  - (2) The cost to replace, on the same premises, the lost or damaged property with other property:
    - (a) Of comparable material and quality; and
    - (b) Used for the same purpose; or
  - (3) The amount you actually spend that is necessary to repair or replace the lost or damaged property.

## H. DEFINITIONS

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- 1. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned, or re-claimed.
- 2. "Stock" means merchandise held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packing or shipping.



## CAUSES OF LOSS – SPECIAL FORM

Words and phrases that appear in quotation marks have special meaning. Refer to Section F - Definitions

### A. COVERED CAUSES OF LOSS

When Special is shown in the Declarations, Covered Causes of Loss means RISKS OF DIRECT PHYSICAL LOSS unless the loss is:

1. Excluded in Section B., Exclusions; or
  2. Limited in Section C., Limitations;
- that follow.

### B. EXCLUSIONS

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

#### a. Ordinance or Law

The enforcement of any ordinance or law:

- (1) Regulating the construction, use or repair of any property; or
- (2) Requiring the tearing down of any property, including the cost of removing its debris.

#### b. Earth Movement

- (1) Any earth movement (other than sinkhole collapse), such as an earthquake, landslide, mine subsidence or earth sinking, rising or shifting. But if loss or damage by fire or explosion results, we will pay for that resulting loss or damage.
- (2) Volcanic eruption, explosion or effusion. But if loss or damage by fire, building glass breakage or volcanic action results, we will pay for that resulting loss or damage.

Volcanic action means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:

- (a) Airborne volcanic blast or airborne shock waves;
- (b) Ash, dust or particulate matter; or
- (c) Lava flow.

All volcanic eruptions that occur within any 168-hour period will constitute a single occurrence.

Volcanic action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss or damage to the described property.

#### c. Government Action

Seizure or destruction of property by order of government authority.

But we will pay for acts of destruction ordered by the government authority and taken at the time of a fire to prevent its spread, if the fire would be covered under this Coverage Part.

#### d. Nuclear Hazard

Nuclear reaction or radiation, or radioactive contamination, however caused.

But if loss or damage by fire results, we will pay for that resulting loss or damage.

#### e. Power Failure

The failure of power or other utility service supplied to the described premises, however caused, if the failure occurs away from the described premises.

But if loss or damage by a Covered Cause of Loss results, we will pay for that resulting loss or damage.

#### f. War and Military Action

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by government authority in hindering or defending against any of these.

**g. Water**

- (1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;
- (2) Mudslide or mudflow;
- (3) Water that backs up from a sewer or drain; or
- (4) Water under the ground surface pressing on, or flowing or seeping through:
  - (a) Foundations, walls, floors or paved surfaces;
  - (b) Basements, whether paved or not; or
  - (c) Doors, windows or other openings.

But if loss or damage by fire, explosion or sprinkler leakage results, we will pay for that resulting loss or damage.

2. We will not pay for loss or damage caused by or resulting from any of the following:

- a. Artificially generated electric current, including electric arcing, that disturbs electrical devices, appliances or wires.

But if loss or damage by fire results, we will pay for that resulting loss or damage.

- b. Delay, loss of use or loss of market.

- c. Smoke, vapor or gas from agricultural smudging or industrial operations

d.

- (1) Wear and tear;
- (2) Rust, corrosion, fungus, decay, deterioration, hidden, or latent defect or any quality in property that causes it to damage or destroy itself;
- (3) Smog;
- (4) Settling, cracking, shrinking or expansion;
- (5) Insects, birds, rodents or other animals;
- (6) Mechanical breakdown, including rupture or bursting caused by centrifugal force; or
- (7) The following causes of loss to personal property:
  - (a) Dampness or dryness of atmosphere;
  - (b) Changes in or extremes of temperature; or
  - (c) Marring or scratching.

But if loss or damage by the "specified causes of loss" or building glass breakage results, we will pay for that resulting loss or damage.

- e. Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. But if loss or damage by fire or combustion explosion results, we will pay for that resulting loss or damage. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.

- f. Continuous or repeated seepage or leakage of water that occurs over a period of 14 days or more.

- g. Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:

- (1) You do your best to maintain heat in the building or structure; or
- (2) You drain the equipment and shut off the supply if the heat is not maintained.

- h. Dishonest or criminal act by you, any of your partners, employees, directors, trustees, authorized representatives or anyone to whom you entrust the property for any purpose:

- (1) Acting alone or in collusion with others; or
- (2) Whether or not occurring during the hours of employment.

This exclusion does not apply to acts of destruction by your employees; but theft by employees is not covered.

- i. Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.

- j. Rain, snow, ice or sleet to personal property in the open.

- k. Collapse, except as provided below in the Additional Coverage for Collapse. But if loss or damage by a Covered Cause of Loss results at the described premises, we will pay for that resulting loss or damage.

- l. Release, discharge or dispersal of "pollutants" unless the release, discharge or dispersal is itself caused by any of the "specified causes of loss". But if loss or damage by the "specified causes of loss" results, we will pay for the resulting damage caused by the "specified cause of loss".

3. We will not pay for loss or damage caused by or resulting from any of the following. But if loss or damage by a Covered Cause of Loss results, we will pay for that resulting loss or damage.

- a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a clause or event excluded in paragraph 1 above to produce the loss or damage.
- b. Acts or decisions, including the failure to act or decide, of any person, group, organization or government body.
- c. Faulty, inadequate or defective:
  - (1) Planning, zoning, development, surveying, siting;
  - (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
  - (3) Materials used in repair, construction, renovation or remodeling; or
  - (4) Maintenance;

of part or all of any property on or off the described premises.

#### 4. Special exclusions

The following provisions apply only to the specified Coverage Forms.

- a. Business Income (And Extra Expense) Coverage Form, Business Income (Without Extra Expense) Coverage Form, or Extra Expense Coverage Form

We will not pay for:

- (1) Any loss caused by or resulting from:
  - (a) Damage or destruction of "finished stock"; or
  - (b) This time required to reproduce "finished stock".

This exclusion does not apply to Extra Expenses.

- (2) Any loss caused by or resulting from direct physical loss or damage to radio or television antennas, including their lead-in wiring, masts or towers.
- (3) Any increase of loss caused by or resulting from:
  - (a) Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or
  - (b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the suspension of "operations", we will cover such loss that affects your Business Income during the "period of restoration".
- (4) Any Extra Expense caused by or resulting from suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration".
- (5) Any other consequential loss.

#### b. Leasehold Interest Coverage Form

- (1) Paragraph B.I.a., Ordinance or Law, does not apply to insurance under this Coverage Form.
- (2) We will not pay for any loss caused by:
  - (a) Your cancelling the lease;
  - (b) The suspension, lapse or cancellation of any license; or
  - (c) Any other consequential loss.

#### c. Legal Liability Coverage Form

- (1) The following Exclusions do not apply to insurance under this Coverage Form:
  - (a) Paragraph B.I.a., Ordinance or Law;
  - (b) Paragraph B.I.c., Governmental Action;
  - (c) Paragraph B.I.d., Nuclear Hazard;
  - (d) Paragraph B.I.e., Power Failure; and
  - (e) Paragraph B.I.f., War and Military Action.
- (2) Contractual Liability  
We will not defend any claim or "suit", or pay damages that you are legally liable to pay, solely by reason of your assumption of liability in a contract or agreement.
- (3) Nuclear Hazard  
We will not defend any claim or "suit", or pay any damages, loss, expense or obligation, resulting from nuclear reaction or radiation, or radioactive contamination, however caused.

## C. LIMITATIONS

- 1. We will not pay for loss of or damage to:
  - a. Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
  - b. Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion.

- c. The interior of any building or structure caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:
    - (1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which rain, snow, sleet, ice, sand, or dust enters; or
    - (2) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.
  - d. Building materials and supplies not attached as part of the building or structure, unless held for sale by you, caused by or resulting from theft, except as provided in C.5.a. below
  - e. Property that is missing, but there is no physical evidence to show what happened to it, such as shortage disclosed on taking inventory.
  - f. Gutters and downspouts caused by or resulting from weight of snow, ice or sleet.
  - g. Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions.
2. We will not pay more for loss of or damage to glass that is part of a building or structure than \$250 for each plate, pane, multiple plate, insulating unit, radiant or solar heating panel, jalousie, louver or shutter. We will not pay more than \$2,500 for all loss of or damage to building glass that occurs at any one time.

This Limitation does not apply to loss or damage by the "specified causes of loss", except vandalism.

- 3. We will not pay for loss of or damage to the following types of property unless caused by the "specified causes of loss" or building glass breakage:
  - a. Valuable papers and records, such as books of account, manuscripts, abstracts, drawings, card index systems, film, tape, disc, drum, cell or other data processing, recording or storage media and other records.
  - b. Animals, and then only if they are killed or their destruction is made necessary.
  - c. Fragile articles such as glassware, statuary, marbles, chinaware and porcelains, if broken.

This restriction does not apply to:

- (1) Glass that is part of a building or structure;
    - (2) Containers of property held for sale; or
    - (3) Photographic or scientific instrument lenses.
  - d. Builders' machinery, tools, and equipment you own or that are entrusted to you while away from the premises described in the Declarations, except as provided in paragraph C.5.b. below
4. For loss or damage by theft, the following types of property are covered up to the limits shown:
- a. \$2,500 for furs, fur garments and garments trimmed with fur.
  - b. \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item.
  - c. \$2,500 for patterns, dies, molds and forms.
  - d. \$250 for stamps, tickets and letters of credit.

#### 5. Builders' Risk Coverage Form Limitations

The following provisions apply only to the Builders' Risk Coverage Form

- a. Limitation 1.d. is replaced by the following:
  - d. Building materials and supplies not attached as part of the building or structure caused by or resulting from theft.
- b. Limitation s.d. is replaced by the following:
  - d. Builders' machinery, tools and equipment you own or that are entrusted to you.

## D. ADDITIONAL COVERAGE - COLLAPSE

We will pay for loss or damage caused by or resulting from risks of direct physical loss involving collapse of a building or any part of a building caused only by one or more of the following:

- 1. The "specified causes of loss" or breakage of building glass, all only as insured against in this Coverage Part;
- 2. Hidden decay;
- 3. Hidden insect or vermin damage;
- 4. Weight of people or personal property;
- 5. Weight of rain that collects on a roof;
- 6. Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

We will not pay for loss or damage to the following types of property, if otherwise covered in this Coverage Part., under items 2., 3., 4., 5. and 6. unless the loss or damage is a direct result of the collapse of a building:

outdoor radio or television antennas, including their lead-in wiring, masts or towers; awnings, gutters and down spouts; yard fixtures; outdoor swimming pools; fences; piers, wharves and docks; beach or diving platform1s or appurtenances; retaining walls; walks, roadways and other paved surfaces.

Collapse does not include settling, cracking, shrinking, bulging or expansion.

This Additional Coverage will not increase the Limits of Insurance provided in this Coverage Part.

## E. ADDITIONAL COVERAGE EXTENSIONS

1. Property In Transit. This Extension applies only to your personal property to which this form applies.
  - a. You may extend the insurance provided by this Coverage Part to apply to your personal property (other than property in the care, custody or control of your salespersons) in transit more than 100 feet from the described premises. Property must be in or on a motor vehicle you own, lease or operate while between points in the coverage territory.
  - b. Loss or damage must be caused by or result from one of the following causes of loss:
    - (1) Fire, lightening, explosion, windstorm or hail, riot or civil commotion, or vandalism.
    - (2) Vehicle collision upset or overturns. Collision means accidental contact of your vehicle with another vehicle or object. It does not mean your vehicle's contact with the road bed.
    - (3) Theft of an entire bale, case or package by forced entry into a securely locked body or compartment of the vehicle. There must be visible marks of the forced entry.
  - c. The most we will pay for loss or damage under this Extension is \$1,000.

This Coverage Extension is additional insurance. The Additional Condition, Coinsurance, does not apply to this Extension.

2. Water Damage, Other Liquids, Powder or Molten Material. If loss or damage caused by or resulting from covered water or other liquid, powder or molten material damage occurs, we will also pay the cost to tear out and replace any part of the building or structure to repair damage to the system or appliance from which the water or other substance escapes.

We will not pay for the cost to repair any defect that caused the loss or damage; but we will pay the cost to repair or replace damaged parts of fire extinguishing equipment if the damage:

- a. Results in discharge of any substance from an automatic fire protection system; or
- b. Is directly caused by freezing.

## F. DEFINITIONS

"Specified Causes of Loss" means the following:

Fire; lightening; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.

1. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:
  - a. The cost of filling sinkholes; or
  - b. Sinking or collapse of land into man-made underground cavities.
2. Falling objects does not include loss or damage to:
  - a. Personal property in the open; or
  - b. The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.
3. Water damage means accidental discharge or leakage of water or stream as the direct result of the breaking or cracking of any part of a system or appliance containing water or steam.



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

This endorsement modifies insurance provided under the following FD-CP0032  
Business Income Coverage Form (Without Extra Expense)

**ELECTRONIC DATA ENDORSEMENT B**

**1. Electronic Data Exclusion**

Notwithstanding any provision to the contrary within the Policy or any endorsement thereto, it is understood and agreed as follows:

- a) This Policy does not insure loss, damage, destruction, distortion, erasure, corruption or alteration of ELECTRONIC DATA from any cause whatsoever (including but not limited to COMPUTER VIRUS) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting therefrom, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

ELECTRONIC DATA means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

COMPUTER VIRUS means a set of corrupting, harmful or otherwise unauthorized instructions or code including a set of maliciously introduced unauthorized instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature. COMPUTER VIRUS includes but is not limited to 'Trojan Horses', 'worms' and 'time or logic bombs'.

- b) However, in the event that a peril listed below results from any of the matters described in paragraph a) above, this Policy, subject to all its terms, conditions and exclusions, will cover physical damage occurring during the Policy period to property insured by this Policy directly caused by such listed peril.

Listed Perils

Fire  
Explosion

**2. Electronic Data Processing Media Valuation**

Notwithstanding any provision to the contrary within the Policy or any endorsement thereto, it is understood and agreed as follows:

Should electronic data processing media insured by this Policy suffer physical loss or damage insured by this Policy, then the basis of valuation shall be the cost of the blank media plus the costs of copying the ELECTRONIC DATA from back-up or from originals of a previous generation. These costs will not include research and engineering nor any costs of recreating, gathering or assembling such ELECTRONIC DATA. If the media is not repaired, replaced or restored the basis of valuation shall be the cost of the blank media. However this Policy does not insure any amount pertaining to the value of such ELECTRONIC DATA to the Assured or any other party, even if such ELECTRONIC DATA cannot be recreated, gathered or assembled.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

Date Issued: 2020-07-15



## COMMERCIAL PROPERTY CONDITIONS

This Coverage Part is subject to the following conditions, the Common Policy Conditions and applicable Loss Conditions and Additional Conditions in Commercial Property Coverage Forms.

### A. CONCEALMENT, MISREPRESENTATION OR FRAUD

This Coverage Part is void in any case of fraud by you as it relates to this Coverage Part at any time. It is also void if you or any other insured, at any time, intentionally conceal or misrepresent a material fact concerning:

1. This Coverage Part;
2. This Covered Property;
3. Your interest in the Covered Property; or
4. A claim under this Coverage Part.

### B. CONTROL OF PROPERTY

Any act or neglect of any person other than you beyond your direction or control will not affect this insurance.

The breach of any condition of this Coverage Part at any one or more locations will not affect coverage at any location where, at the time of loss or damage, the breach of condition does not exist.

### C. INSURANCE UNDER TWO OR MORE COVERAGES

If two or more of this policy's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.

### D. LEGAL ACTION AGAINST US

No one may bring legal action against us under this Coverage Part unless:

1. There has been full compliance with all of the terms of this Coverage Part; and
2. The action is brought within 2 years after the date on which the direct physical loss or damage occurred.

### E. LIBERALIZATION

If we adopt any revision that would broaden the coverage under this Coverage Part without additional premium within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this Coverage Part.

### F. NO BENEFIT TO BAILEE

No person or organization, other than you, having custody of Covered Property will benefit from this insurance.

### G. OTHER INSURANCE

1. You may have other insurance subject to the same plan, terms, conditions, and provisions as the insurance under this Coverage Part. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering on the same basis.
2. If there is other insurance covering the same loss or damage, other than that described in 1. above, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance.

### H. POLICY PERIOD, COVERAGE TERRITORY

Under this Coverage Part:

1. We cover loss or damage commencing:
  - a. During the policy period shown in the Declarations; and
  - b. Within the coverage territory.
2. The coverage territory is:
  - a. The United States of America (including its territories and possessions);
  - b. Puerto Rico; and
  - c. Canada

#### **I. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US**

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If any person or organization to or for whom we make payment under this Coverage Part has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:

1. Prior to a loss to your Covered Property or Covered Income.
2. After a loss to your Covered Property or Covered Income only if, at time of loss, that party is one of the following:
  - a. Someone insured by this insurance;
  - b. A business firm:
    - (1) Owned or controlled by you; or
    - (2) That owns or controls you; or
  - c. Your tenant.

This will not restrict your insurance.



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261  
Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

This endorsement modifies insurance provided under the following:

**Form No. FD-CP1030**

**CAUSES OF LOSS - SPECIAL FORM**

**SJC MOLD EXCLUSION**

The following provision changes coverage afforded by the Policy:

**TOTAL "MOLD" EXCLUSION**

Notwithstanding anything to the contrary contained in the Policy,:

We will not pay for loss, damage, cost, or expense caused directly or indirectly by, arising out of, resulting from, contributed to by, or related in any way to "mold". Loss, damage, cost, or expense caused directly or indirectly by, arising out of, resulting from, contributed to by, or related in any way to "mold" is excluded regardless of any other cause or event that contributes concurrently, or in any sequence with, the loss, damage, cost or expense.

The following definition is added to the Policy;

"Mold" means any species of fungi, including, but not limited to, mold, yeast, mildew, spores, mold toxins, mycotoxins, mold metabolites, mold antigens, mold allergens, smut, wet or dry rot, mold-produced antibiotics, or dust or fumes containing any of the foregoing, individually, or in any combination therewith or with another substance.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

**OWL UNDERWRITING AGENCY**

A handwritten signature in black ink, appearing to read "R. H. [unclear]", is written over a horizontal line.

Authorized Representative

Date Issued: 2020-07-15



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261  
Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

**MONITORED ALARM REQUIREMENT – CONDITIONS PRECEDENT**

This endorsement modifies insurance provided under the following:

BUILDING & PERSONAL PROPERTY COVERAGE FORM

It is hereby noted and agreed that as a condition precedent to coverage for Burglary or Theft, the insured must have and maintain a monitored central station alarm system which is functioning properly at the time of loss.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Date Issued: 2020-07-15



## COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under WHO IS AN INSURED (SECTION II).

Other words and phrases that appear in quotation marks have special meaning. Refer to DEFINITIONS (SECTION V).

### SECTION I - COVERAGES

#### COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY

##### 1. Insuring Agreement.

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend any "suit" seeking those damages. We may at our discretion investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in LIMITS OF INSURANCE (SECTION III); and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

- b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory"; and
- (2) The "bodily injury" or "property damage" occurs during the policy period.

- c. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

##### 2. Exclusions.

This insurance does not apply to:

- a. "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.
- b. "Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:
  - (1) Assumed in a contract or agreement that is an "insured contract" provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement; or
  - (2) That the insured would have in the absence of the contract or agreement.
- c. "Bodily injury" or "property damage" for which any insured may be held liable by reason of:
  - (1) Causing or contributing to the intoxication of any person;
  - (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
  - (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

- d. Any obligation of the insured under a workers' or unemployment compensation law or any similar law.
- e. "Bodily injury" to:
  - (1) An employee of the insured arising out of and in the course of employment by the insured; or

- (2) The spouse, child, parent, brother or sister of that employee as a consequence of (1) above

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and  
 (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f.

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants:
- (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured;
  - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
  - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization for whom you may be legally responsible; or
  - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations:
    - (i) if the pollutants are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor; or
    - (ii) if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

Subparagraphs (a) and (d) (i) do not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a hostile fire.

As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants; or
  - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

- g. "Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent
- (2) A watercraft you do not own that is:
  - (a) Less than 26 feet long; and
  - (b) Not being used to carry persons or property for a charge;
- (3) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (4) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in paragraph f.(2) or f.(3) of the definition of "mobile equipment" (Section V.8.).

h. "Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity;
- (3) The ownership, maintenance or use of any "mobile equipment" which is not listed under the schedule of exposures and applicable premium paid hereunder.

i. "Bodily injury" or "property damage" due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution. This exclusion applies only to liability assumed under a contract or agreement.

j. "Property damage" to:

- (1) Property you own, rent, or occupy;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;

- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraph (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard."

- k. "Property damage" to "your product" arising out of it or any part of it.
- l. "Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard."

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

- m. "Property damage" to "impaired property" or property that has not been physically injured. Arising out of:
  - (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
  - (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

- n. Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:
  - (1) "Your product";
  - (2) "Your work"; or
  - (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

Exclusion c. through n. do not apply to damage by fire to premises rented to you.

## COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY

### 1. Insuring Agreement.

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal injury" or "advertising injury" to which this coverage part applies. We will have the right and duty to defend any "suit" seeking those damages. We may at our discretion investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:
  - (1) The amount we will pay for damages is limited as described in LIMITS OF INSURANCE (SECTION III); and
  - (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverage A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS - COVERAGES A AND B.

- b. This insurance applies to:
  - (1) "Personal injury" caused by an offense arising out of your business, excluding advertising, publishing, broadcasting or telecasting done by or for you;
  - (2) "Advertising injury" caused by an offense committed in the course of advertising your goods, products or services;

but only if the offense was committed in the "coverage territory" during the policy period.

### 2. Exclusions.

This insurance does not apply to:

- a. "Personal injury" or "advertising injury";
  - (1) Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity;
  - (2) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;

- (3) Arising out of the willful violation of a penal statute or ordinance committed by or with the consent of the insured; or
- (4) For which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

b. "Advertising injury" arising out of:

- (1) Breach of contract, other than misappropriation of advertising ideas under an implied contract;
- (2) The failure of goods, products or services to conform with advertised quality or performance;
- (3) The wrong description of the price of goods, products or services; or
- (4) An offense committed by an insured whose business is advertising, broadcasting, publishing or telecasting.

## COVERAGE C. MEDICAL PAYMENTS

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### 1. Insuring Agreement.

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
- (2) On ways next to premises you own or rent; or
- (3) Because of your operations;

provided that:

- (1) The accident takes place in the "coverage territory" and during the policy period;
- (2) The expenses are incurred and reported to us within one year of the date of the accident; and
- (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

### 2. Exclusions.

We will not pay expenses for "bodily injury":

- a. To any insured.
- b. To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. To a person injured on that part of premises you own or rent that the person normally occupies.
- d. To a person, whether or not an employee of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or similar law.
- e. To a person injured while taking part in athletics.
- f. Included within the "products-completed operations hazard".
- g. Excluded under Coverage A.
- h. Due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution.

## SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

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We will pay, with respect to any claim or "suit" we defend:

- 1. All expenses we incur.
- 2. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- 3. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.

4. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$100 a day because of time off from work.
5. All costs taxed against the insured in the "suit".
6. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
7. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will reduce the limits of insurance.

## SECTION II- WHO IS AN INSURED

1. If you are designated in the Declarations as:
  - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
  - c. An organization other than a partnership or joint venture, you are an insured. Your executive officers and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
2. Each of the following is also an insured:
  - a. Your employees, other than your executive officers, but only for acts within the scope of their employment by you. However, no employee is an insured for:
    - (1) "Bodily injury" or "personal injury" to you or to a co- employee while in the course of his or her employment, or the spouse, child, parent, brother or sister of that co-employee as a consequence of such "bodily injury" or "personal injury", or for any obligation to share damages with or repay someone else who must pay damages because of the injury; or
    - (2) "Bodily injury" or "personal injury" arising out of his or her providing or failing to provide professional health care services; or
    - (3) "Property damage" to property owned or occupied by or rented or loaned to that employee, any of your other employees, or any of your partners or members (if you are a partnership or joint venture).
  - b. Any person (other than your employee), or any organization while acting as your real estate manager.
  - c. Any person or organization having proper temporary custody of your property if you die, but only:
    - (1) With respect to liability arising out of the maintenance or use of that property; and
    - (2) Until your legal representative has been appointed.
  - d. Your legal representative if you die but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
3. With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:
  - a. "Bodily injury" to a co-employee of the person driving the equipment; or
  - b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.
4. Any organization you newly acquire or form, other than a partnership or joint venture, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
  - a. Coverage under this provision is afforded only until the 90th day after your acquire or form the organization or the end of the policy period, whichever is earlier;
  - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
  - c. Coverage B does not apply to "personal injury" or "advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations.

### SECTION III - LIMITS OF INSURANCE

1. The limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits".
2. The General Aggregate Limit is the most we will pay for the sum of:
  - a. Medical expenses under Coverage C;
  - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
  - c. Damages under Coverage B.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal injury" and all "advertising injury" sustained by any one person or organization.
5. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
  - a. Damages under Coverage A; and
  - b. Medical expenses under Coverage C

because of all "bodily injury" and "property damage" arising out of any one "occurrence".

6. Subject to 5. above, the Fire Damage Limit is the most we will pay under Coverage A for damages because of "property damage" to premises rented to you arising out of any one fire.
7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The limits of the Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

### SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

#### 1. Bankruptcy.

- a. Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

#### 2. Duties In The Event Of Occurrence, Claim Or Suit.

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
  - (1) How, when and where the "occurrence" or offense took place;
  - (2) The names and addresses of any injured persons and witnesses; and
  - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against any insured, you must:
  - (1) Immediately record the specifics of the claim or "suit" and the date received; and
  - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
  - (2) Authorize us to obtain records and other information;
  - (3) Cooperate with us in the investigation, settlement or defense of the claim or "suit"; and
  - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d. No insureds will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

### **3. Legal Action Against Us.**

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

### **4. Other Insurance.**

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

#### **a. Primary Insurance.**

This insurance is primary except when b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in c. below.

#### **b. Excess Insurance.**

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

- (1) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
- (2) That is Fire insurance for premises rented to you; or
- (3) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Coverage A (Section I).

When this insurance is excess, we will have no duty under Coverage A or B to defend any claim or "suit" that any other insurer has a duty to defend. If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of the Coverage Part.

#### **c. Method of Sharing.**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

### **5. Premium Audit.**

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advanced premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy term is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

#### **6. Representations.**

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

#### **7. Separation of Insureds.**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

#### **8. Transfer of Rights of Recovery Against Others To Us.**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

#### **9. When We Do Not Renew.**

If we decide not to renew this Coverage Part, we will mail or deliver the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

## **SECTION V - DEFINITIONS**

#### **1. "Advertising injury" means injury arising out of one or more of the following offenses:**

- a. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- b. Oral or written publication of material that violates a person's right of privacy;
- c. Misappropriation of advertising ideas or style of doing business; or
- d. Infringement of copyright, title or slogan.

#### **2. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".**

#### **3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.**

#### **4. "Coverage Territory" means:**

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;

- b. International waters or airspace, provided the injury or damage does not occur in the course of travel or transportation to or from any place not included in a. Above; or
  - c. All parts of the world if:
    - (1) The injury or damage arises out of:
      - (a) Goods or products made or sold by you in the territory described in a. above; or
      - (b) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; and
    - (2) The insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in a. above or in a settlement we agree to.
5. **"Impaired property"** means tangible property other than "your product" or "your work" that cannot be used or is less useful because:
- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. You have failed to fulfill the terms of a contract or agreement;
- if such property can be restored to use by:
- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
  - b. Your fulfilling the terms of the contract or agreement.
6. **"Insured Contract"** means any written:
- a. Lease of premises
  - b. Easement agreement, except in connection with construction or demolition operations on or adjacent to a railroad;
  - c. Indemnification of a municipality as required by ordinance, except in connection with work for the municipality;
  - d. Sidetrack agreement or any easement or license agreement in connection with vehicle or pedestrian private railroad crossings at grade; or
  - e. Elevator maintenance agreement.
- An "insured contract" does not include that part of any contract or agreement that indemnifies any person or organization for damage by fire to premises rented or loaned to your.
7. **"Loading or unloading"** means the handling of property:
- a. After it is removed from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
  - b. While it is in or on an aircraft, watercraft or "auto"; or while it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
8. **"Mobile equipment"** means any of the following types of land vehicles, including any attached machinery or equipment.
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
  - b. Vehicles maintained for use solely on or next to premises you own or rent;
  - c. Vehicles that travel on crawler treads;
  - d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
    - (1) Power cranes, shovels, loaders, diggers or drills; or
    - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;

- e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c., or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
  - (a) Snow Removal
  - (b) Road maintenance, but not construction or resurfacing;
  - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

9. **"Occurrence"** means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

10. **"Personal injury"** means injury, other than "bodily injury", arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies by or on behalf of its owner, landlord or lessor;
- d. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or
- e. Oral or written publication of material that violates a person's right of privacy.

11.

- a. **"Products-completed operations hazard"** includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
  - (1) Products that are still in your physical possession; or
  - (2) Work that has not yet been completed or abandoned.
- b. "Your work" will be deemed completed at the earliest of the following times:
  - (1) When all of the work called for in your contract has been completed.
  - (2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site.
  - (3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- c. This hazard does not include "bodily injury" or "property damage" arising out of:
  - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle created by the "loading or unloading" of it;
  - (2) The existence of tools, uninstalled equipment or abandoned or unused materials;
  - (3) Products or operations for which the classification in this Coverage Part or in our manual of rules includes products or completed operations.

12. **"Property damage"** means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

- b. Loss of use of tangible property that is not physically injured. All such loss shall be deemed to occur at the time of the "occurrence" that caused it.
13. **"Suit"** means civil proceeding in which damage because of "bodily injury", "property damage", "personal injury" or "advertising injury" to which this insurance applies are alleged. "Suit" includes:
- a. An arbitration proceeding in which such damages are claimed and to which you must submit or do submit with our consent; or
  - b. Any other alternative dispute resolutions proceeding in which such damages are claimed and to which you submit with our consent.
14. **"Your product"** means:
- a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
    - (1) You;
    - (2) Others trading under your name; or
    - (3) A person or organization whose business or assets you have acquired; and
  - b. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

"Your product" includes:

- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- b. The providing of or failure to provide warnings or instructions.

"Your product" does not include vending machines or other property rented to or located for the use of others but not sold.

15. **"Your work"** means:

- a. Work or operations performed by you or on your behalf; and
- b. Materials, parts or equipment furnished in connection with such work or operations.

"Your work" includes:

- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
- b. The providing of or failure to provide warnings or instructions.



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261  
Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

**HIRED AUTO AND NON-OWNED AUTO LIABILITY**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

**SCHEDULE**

Insurance is provided only with respect to those coverages for which a specific premium charge is shown:

	<u>Coverages</u>	<u>Additional Premium</u>
Non-Ownership Liability	\$1,000,000.	\$ included
Hired Auto Liability	Not Covered	\$ nil

**NON-OWNED AUTO LIABILITY.**

The insurance provided under COVERAGE A (Section I) applies to "bodily injury" or "property damage" arising out of the use of any "non-owned auto" in your business by any person other than you.

The following additional definitions apply:

"Auto business" means the business or occupation of repairing, servicing, storing or parking "autos".

"Hired auto" means any "auto" you lease, hire or borrow. This does not include any "auto" you lease, hire or borrow from any of your employees or members of their households, or from any partner or executive officer of yours.

"Non-owned auto" means any "auto" you do not own, lease, hire or borrow which are used in connection with your business. However, if you are a partnership a "non-owned auto" does not include any auto owned by any partner.

**HIRED AUTO LIABILITY**

The insurance provided under COVERAGE A (Section I) applies to "bodily injury" or "property damage" arising out of the maintenance or use of a "hired auto" by you or your employees in the course of your business.

With respect to the insurance provided by this endorsement:

1. The exclusions, under COVERAGE A (Section I), other than exclusions a, b, d, f and i and the Nuclear Energy Liability Exclusion (Broad Form) are deleted and replaced by the following:

- a. "Bodily injury":

- (1) To an employee of the insured arising out of and in the course of employment by the insured; or
    - (2) To the spouse, child, parent, brother or sister of that employee as a consequence of (1) above.

Exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
    - (2) To any obligation to share damages with or repay someone else who must pay damages because of injury.

This exclusion does not apply to:

- (1) Liability assumed by the insured under an "insured contract"; or
- (2) "Bodily injury" arising out of and in the course of domestic employment by the insured unless benefits for such injury are in whole or in part either payable or required to be provided under any workers compensation law.

b. "Property damage" to:

- (1) Property owned or being transported by or rented or loaned to the insured; or
- (2) Property in the care, custody or control of the insured.

2. WHO IS AN INSURED (Section II) is replaced by the following:

a. Each of the following is an insured under this insurance to the extent set forth below:

- a. You;
- b. Any other person using a "hired auto" with your permission;
- c. With respect to a "non-owned auto" any partner or executive officer of yours, but only while such "non-owned auto" is being used in your business;
- d. Any other person or organization, but only with respect to their liability because of acts or omissions of an insured under a, b, or c above.

None of the following is an insured:

- a. Any person engaged in the business of his or her employer with respect to "bodily injury" to any co-employee of such person injured in the course of employment;
- b. Any partner or executive officer with respect to any "auto" owned by such partner or officer or a member of his or her household;
- c. Any person while employed in or otherwise engaged in duties in connection with an "auto business", other than an "auto business" you operate;
- d. The owner or lessee (of whom you are a sub lessee) of a "hired auto" or the owner of a "non-owned auto" or any agent or employee of any such owner or lessee;
- e. Any person or organization with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declaration.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Date Issued: 2020-07-15



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

**PRODUCTS / COMPLETED OPERATIONS HAZARD REDEFINED**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

With respect to "bodily injury" or "property damage" arising out of "your products" manufactured, sold, handled or distributed:

1. On, from or in connection with the use of any premises described in the Schedule, or
2. In connection with the conduct of any operation described in the Schedule, when conducted by you or on your behalf,

Paragraph a, of the definition of "Products-completed Operations hazard" in the DEFINITIONS Section is replaced by the following:

- a. "Products-completed operations hazard" includes all "bodily injury" and "property damage" that arises out of "your products" if the "bodily injury" or "property damage" occurs after you have relinquished possession of those products.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

Date Issued: 2020-07-15



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

**EXCLUSION – DESIGNATED PROFESSIONAL SERVICES**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

With respect to any professional services, including, but not limited to, the instruction or supervision of diving activities, snorkel activities or swimming activities, this insurance does not apply to "bodily injury", "property damage", "personal injury" or "advertising injury" due to the rendering of or failure to render any professional service by anyone whenever or wherever occurring, including any allegations of vicarious liability for the actions of another.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

Date Issued: 2020-07-15



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

**ABSOLUTE AUTO, AIRCRAFT AND WATERCRAFT EXCLUSION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions**, paragraph **g.** is deleted and replaced with the following:

- g. "Bodily injury" or "property damage" arising directly or indirectly out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft. Use includes operations and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervisions, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

Date Issued: 2020-07-15



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

#### **IMMUNE DEFICIENCY EXCLUSION**

In consideration of the premium charged and notwithstanding anything contained in this policy to the contrary, it is understood and agreed that this policy shall not provide coverage of any kind for any claims related directly or indirectly to:

1. The Human Immune Deficiency Virus (HIV);
2. The Acquired Immune Deficiency Syndrome Related Complex (ARC)
3. The Acquired Immune Deficiency Syndrome (AIDS)
4. Any Virus, Complex or Syndrome that is related to the foregoing.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Date Issued: 2020-07-15



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

**PUNITIVE OR EXEMPLARY DAMAGES EXCLUSION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

This policy excludes all coverage for punitive or exemplary damages whether arising out of acts of the insured, insured's employees or any other person.

If the exclusion of punitive or exemplary damages is not permitted by the law of the state in which a claim for punitive or exemplary damages is brought, then this exclusion shall limit those damages to the extent permitted by law, but in no event shall the total of compensatory and punitive or exemplary damages be payable in excess of the limit of coverages provided herein.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

Date Issued: 2020-07-15



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

**EXCLUSION - DIVING BOARDS**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

This policy does not provide coverage for any claim arising out of any incident occurring on a diving board or arising out of the use, ownership or maintenance of a diving board.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Date Issued: 2020-07-15



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

**ASSAULT AND BATTERY EXCLUSION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

In consideration of the premium charged, it is agreed that NO coverage of any kind (including but not limited to cost of defense) is provided by this policy for Bodily Injury and/or Property Damage arising out of or caused in whole or in part by an assault and/or battery. Further, NO coverage is provided if the underlying operative facts constitute an assault and/or battery irrespective of whether the claim alleges negligent hiring, supervision and/or retention against the insured or any other negligent action.

This endorsement supplements any other provision(s) of the policy to the extent it is not inconsistent therewith. In the event this endorsement is deemed inconsistent with any other provision of the policy, then this endorsement overrides and replaces that provision.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

Date Issued: 2020-07-15



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

**EXCLUSION - ATHLETIC OR SPORTS PARTICIPANTS**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

It is hereby noted and agreed that this insurance does not apply to "bodily injury" to any person while practicing for or participating in any sports or athletic contest or exhibition that you sponsor.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Date Issued: 2020-07-15



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Policy No.: FD001261

Named Insured: PS Dive Shop, LLC DBA Portsmouth Scuba

This endorsement modifies insurance provided under the following:

**FD-GL0001**

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

**SJC MOLD EXCLUSION**

Notwithstanding anything to the contrary contained in the Policy,:

We will not pay for loss, damage, cost, or expense caused directly or indirectly by, arising out of, resulting from, contributed to by, or related in any way to "mold". Loss, damage, cost, or expense caused directly or indirectly by, arising out of, resulting from, contributed to by, or related in any way to "mold" is excluded regardless of any other cause or event that contributes concurrently, or in any sequence with, the loss, damage, cost or expense.

The following definition is added to the Policy;

"Mold" means any species of fungi, including, but not limited to, mold, yeast, mildew, spores, mold toxins, mycotoxins, mold metabolites, mold antigens, mold allergens, smut, wet or dry rot, mold-produced antibiotics, or dust or fumes containing any of the foregoing, individually, or in any combination therewith or with another substance.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

Date Issued: 2020-07-15



## CRIME COVERAGE GENERAL PROVISIONS

The provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the DECLARATIONS. The words "we", "us" and "our" refer to the Company providing this insurance.

The phrases in quotation marks are defined in the policy.

Unless stated otherwise in any Crime Coverage Form, DECLARATIONS or endorsement, the following General Exclusions, General Conditions and General Definitions apply to all Crime Coverage Forms forming part of this policy.

### A. GENERAL EXCLUSIONS

1. Acts Committed by You or Your Partners: Loss resulting from any dishonest or criminal act committed by you or any of your partners whether acting alone or in collusion with other persons.
2. Governmental Action: Loss resulting from seizure or destruction of property by order of governmental authority.
3. Indirect Loss: Loss that is an indirect result of any act or "occurrence" covered by this insurance including, but not limited to, loss resulting from:
  - a. Your inability to realize income that you would have realized had there been no loss of, or loss from damage to, Covered Property.
  - b. Payment of damages of any type for which you are legally liable. But, we will pay compensatory damages arising directly from a loss covered under this insurance.
  - c. Payment of costs, fees or other expenses you incur in establishing either the existence or the amount of loss under this insurance.
4. Legal Expenses: Expenses related to any legal action.
5. Nuclear: Loss resulting from the nuclear reaction, nuclear radiation or radioactive contamination, or any related act or incident.

### B. GENERAL CONDITIONS

1. Consolidation-Merger: If through consolidation or merger with, or purchase of assets of, some other entity:
  - a. Any additional persons become "employees"; or
  - b. Your acquire the use and control of any additional "premises";

any insurance afforded for "employees" or "premises" also applies to those additional "employees" and "premises", but only if you:

- a. Give us written notice within 30 days thereafter; and
  - b. Pay us an additional premium.
2. Coverage Extensions: Unless stated otherwise in the Coverage Form, our liability under any Coverage Extension is part of, not in addition to, the Limit of Insurance applying to the Coverage or Coverage Section.
3. Discovery Period of Loss: We will pay only for covered loss discovered no later than one year from the end of the policy period.
4. Duties in the Event of Loss: After you discover a loss or a situation that may result in loss of, or loss from damage to, Covered Property you must:
  - a. Notify us as soon as possible.
  - b. Submit to examination under oath at our request and give us a signed statement of your answers.
  - c. Give us detailed, sworn proof of loss within 120 days.
  - d. Cooperate with us in the investigation and settlement of any claim.
5. Joint Insured

- a. If more than one Insured is named in the DECLARATIONS, the first named insured will act for itself and for every other Insured for all purposes of this insurance. If the first named Insured ceases to be covered, then the next named Insured will become the first named Insured.
  - b. If any Insured or partner or officer of that Insured has knowledge of any information relevant to this insurance, that knowledge is considered knowledge of every insured.
  - c. An "employee" of any Insured is considered to be an "employee" of every insured.
  - d. If this insurance or any of its coverage is cancelled or terminated as to any insured, loss sustained by that Insured is covered only if discovered no later than one year from the date of that cancellation or termination.
  - e. We will not pay more for loss sustained by more than one Insured than the amount we would pay if all the loss had been sustained by one Insured
6. Legal Action Against Us: You may not bring any legal action against us involving loss:
  - a. Unless you have complied with all the terms of this insurance; and
  - b. Until 90 days after you have filed proof of loss with us; and
  - c. Unless brought within 2 years from the date you discover the loss.
7. Loss Covered Under More Than One Coverage of This Insurance: If two or more coverages of this insurance apply to the same loss, we will pay the lesser of:
  - a. The actual amount of loss; or
  - b. The sum of the limits of insurance applicable to those coverages.
8. Loss Sustained During Prior Insurance.
  - a. If you, or any predecessor in interest, sustained loss during the period of any prior insurance that you or the predecessor in interest could have recovered under that insurance except that the time within which to discover loss had expired, we will pay for it under this insurance, provided:
    - (1) This insurance became effective at the time of cancellation or termination of the prior insurance; and
    - (2) The loss would have been covered by this insurance had it been in effect when the acts or events causing the loss were committed or occurred.
  - b. The insurance under this Condition is part of, not in addition to, the Limits of Insurance applying to this insurance and is limited to the lesser of the amount recoverable under:
    - (1) This insurance as of its effective date; or
    - (2) The prior insurance had it remained in effect.
9. Loss Covered Under This Insurance and Prior Insurance Issued by Us or Any Affiliate: If any loss is covered:
  - a. Partly by this insurance; and
  - b. Partly by any prior cancelled or terminated insurance that we or any affiliate had issued to you or any predecessor in interest;

the most we will pay is the larger of the amount recoverable under this insurance or the prior insurance.
10. Non-Cumulation of Limit of Insurance: Regardless of the number of years this insurance remains in force or the number of premiums paid, no Limit of Insurance cumulates from year to year or period to period.
11. Other Insurance: This insurance does not apply to loss recoverable or recovered under other insurance or indemnity. However, if the limit of the other insurance or indemnity is insufficient to cover the entire amount of the loss, this insurance will apply to that part of the loss, other than that failing within any deductible amount, not recoverable or recovered under the other insurance or indemnity. However, this insurance will not apply to the amount of loss that is more than the applicable Limit of Insurance shown in the DECLARATIONS.
12. Ownership of Property; Interests Covered: The property covered under this Insurance is limited to property:
  - a. That you own or hold; or
  - b. For which you are legally liable.

However, this insurance is for your benefit only. It provides no rights or benefits to any other person or organization.
13. Policy Period:
  - a. The Policy Period is shown in the DECLARATIONS.
  - b. Subject to the Loss Sustained During Prior Insurance condition, we will pay only for loss that you sustain through acts committed or events occurring during the Policy Period.
14. Records: You must keep records of all Covered Property so we can verify the amount of any loss.
15. Recoveries
  - a. Any recoveries, less the cost of obtaining them, made after settlement of loss covered by this insurance will be distributed as follows:
    - (1) To you, until you are reimbursed for any loss that you sustain that exceeds the Limit of Insurance and the Deductible Amount, if any;

- (2) Then to us, until we are reimbursed for the settlement made;
  - (3) Then to you, until you are reimbursed for that part of the loss equal to the Deductible Amount, if any.
- b. Recoveries do not include any recovery:
  - (1) From insurance, suretyship, reinsurance, security or indemnity taken for our benefit; or
  - (2) Of original "securities" after duplicates of them have been issued.
- 16. Territory: This insurance covers only acts committed or events occurring within the United States of America, US Virgin Islands, Puerto Rico, Canal Zone, or Canada.
- 17. Transfer of Your Rights of Recovery Against Others to Us: You must transfer to us all your rights of recovery against any person or organization for any loss you sustained and for which we have paid or settled. You must also do everything necessary to secure those rights and do nothing after loss to impair them.
- 18. Valuation - Settlement
  - a. Subject to the applicable Limit of Insurance provision we will pay for:
    - (1) Loss of "money" but only up to and including its face value. We may, at our option, pay for loss of "money" issued by any country other than the United States of America:
      - (a) At face value in the "money" issued by that country; or
      - (b) In the United States of America dollar equivalent determined by the rate of exchange on the day the loss was discovered.
    - (2) Loss of "securities" but only up to and including their value at the close of business on the day the loss was discovered. We may, at our option:
      - (a) Pay the value of such "securities" or replace them in kind, in which event you must assign to us all your rights, title and interest in and to those "securities";
      - (b) Pay the cost of any Lost Securities Bond required in connection with issuing duplicates of the "securities". However, we will be liable only for the payment of so much of the cost of the bond as would be charged for a bond having a penalty not exceeding the lesser of the:
        - (i) Value of the "securities" at the close of business on the day the loss was discovered; or
        - (ii) Limit of Insurance.
    - (3) Loss of, or loss from damage to, "property other than money and securities" or loss from damage to the "premises" for not more than the:
      - (a) Actual cash value of the property on the day the loss was discovered;
      - (b) Cost of repairing the property or "premises"; or
      - (c) Cost of replacing the property with property of like kind and quality.
  - b. We may, at our option, pay for loss of, or loss from damage to, property other than "money":
    - (1) In the "money" of the country in which the loss occurred; or
    - (2) In the United States of America dollar equivalent of the "money" of the country in which the loss occurred determined by the rate of exchange on the day the loss was discovered.
  - c. Any property that we pay for or replace becomes our property.

## C. GENERAL DEFINITIONS

- 1. **"Employee"** means:
  - a. Any natural person:
    - (1) While in your service (and for 30 days after termination of service); and
    - (2) Whom you compensate directly by salary, wages or commissions; and
    - (3) Whom you have the right to direct and control while performing services for you; or
  - b. Any natural person employed by an employment contractor while that person is subject to your direction and control and performing services for you excluding, however, any such person while having care and custody of property outside the "premises".

But "employee" does not mean any:

- (1) Agent, broker, factor, commission merchant, consignee, independent contractor or representative of the same general character; or
- (2) Director or trustee except while performing acts coming within the scope of the usual duties of an employee.

- 2. **"Money"** means:
  - a. Currency, coins and bank notes in current use and having a face value; and
  - b. Travelers checks, register checks and money orders held for sale to the public.

3. **"Property Other Than Money and Securities"** means any tangible property other than "money" and "securities" that has intrinsic value but does not include any property listed in any Crime Coverage Form as Property Not Covered.
4. **"Securities"** means negotiable and non-negotiable instruments or contracts representing either "money" or other property and includes:
  - a. Tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and
  - b. Evidences of debt issued in connection with credit or charge cards, which cards are not issued by you;but does not include "money".



## EMPLOYEE DISHONESTY COVERAGE FORM (Coverage Form A - Blanket)

### A. COVERAGE

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We will pay for loss of, and loss from damage to, Covered Property resulting directly from the Covered Cause of Loss.

1. Covered Property: "Money", "securities", and "property other than money and securities".
2. Covered Cause of Loss: "Employee dishonesty".
3. Coverage Extension  
Employees Temporarily Outside Coverage Territory: We will pay for loss caused by any "employee" while temporarily outside the territory specified in the Territory General Condition for a period not more than 90 days.

### B. LIMIT OF INSURANCE

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The most we will pay for loss in any one "occurrence" is the applicable Limit of Insurance shown in the DECLARATIONS.

### C. DEDUCTIBLE

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1. We will not pay for loss in any one "occurrence" unless the amount of loss exceeds the Deductible Amount shown in the DECLARATIONS. We will then pay the amount of loss in excess of the Deductible Amount, up to the Limit of Insurance.
2. You must:
  - a. Give us notice as soon as possible of any loss of the type insured under this Coverage Form even though it falls entirely within the Deductible Amount.
  - b. Upon our request, give us a statement describing the loss.

### D. ADDITIONAL EXCLUSIONS, CONDITION AND DEFINITIONS:

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In addition to the provisions in the Crime General Provisions, this Coverage Form is subject to the following:

1. **Additional Exclusions:** We will not pay for loss as specified below:
  - a. Employee Cancelled Under Prior Insurance: loss caused by an "employee" of yours, or predecessor in interest of yours, for whom similar prior insurance has been cancelled and not reinstated since the last such cancellation.
  - b. Inventory Shortages: loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:
    - (1) An inventory/computation; or
    - (2) A profit and loss computation.

2. **Additional Condition.**

Cancellation As To Any Employee: This insurance is cancelled as to any "employee"

- a. Immediately upon discovery by:
  - (1) You; or
  - (2) Any of your partners, officers or directors not in collusion with the "employee";
 of any dishonest act committed by that "employee" whether before or after becoming employed by you.
- b. On the date specified in a notice mailed to you. That date will be at least 30 days after the date of mailing. The mailing of notice to you at the last mailing address known to us will be sufficient proof of notice. Delivery of notice is the same as mailing.

3. **Additional Definitions.**

- a. "Employee Dishonesty" in paragraph A.2 means only dishonest acts committed by an "employee", whether identified or not, acting alone or in collusion with other persons, except you or a partner, with the manifest intent to:
  - (1) Cause you to sustain loss; and also
  - (2) Obtain financial benefit (other than employee benefits earned in the normal course of employment, including: salaries, commissions, fees, bonuses, promotions, awards, profit sharing or pensions) for:
    - (a) The "employee"; or
    - (b) Any person or organization intended by the "employee" to receive that benefit.
- b. "Occurrence" means all loss caused by, or involving, one or more "employee", whether the result of a single act or series of acts.



## INSIDE AND OUTSIDE ROBBERY AND HOLD-UP

### A. INDEMNITY AGREEMENT

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The Insurer agrees subject to the statements contained in the Declarations, the provisions, stipulations, and conditions contained herein and such other exclusions, limitations, conditions, and terms contained in this policy, as follows:

1. **OUTSIDE ROBBERY (HOLD-UP).** To indemnify the Insured to an amount not exceeding the limit of liability stated in the Declarations for loss of or damage to money and securities, including the carrying container thereof, and merchandise, caused by Robbery or attempt thereof from a custodian outside the premises of the Insured but within Canada or the United States of America.
2. **INSIDE ROBBERY (HOLD-UP).** To indemnify the Insured to an amount not exceeding the limit of liability stated in the Declarations for loss of or damage to money, securities, furniture, fixtures and other property in the premises and for damage to the premises if the Insured is the owner thereof or is liable for such damage, provided such loss or damage is caused by:
  - a. Robbery of a Custodian or attempt thereof committed within the premises; or
  - b. Kidnapping, meaning the stealing of such property from within the premises by a person who under the threat of violence compels a custodian while outside the premises to return and admit such person therein, or if forcibly detained elsewhere, to provide information for or means of entry into the premises, provided such loss is the direct result of such acts and occurs prior to the opening of such premises for the regular transaction of business on the next succeeding business day; or
  - c. the stealing of such property from within a show window in the premises while regularly open for business, by a person who has broken the glass thereof from outside the premises, or by an accomplice of such person.

### B. EXCLUSIONS

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The Insurer shall not be liable for loss or damage:

1. to plate glass, and lettering, or ornamentation thereon;
2. if the Insured, any associate in interest, a custodian, or any other employee of the Insured directly in charge of the property insured or any guard accompanying a custodian is either a principal or an accessory in effecting or attempting to effect robbery, theft or burglary;
3. unless books and accounts are kept by the Insured in such manner that the Insurer can accurately determine therefrom the amount of loss or damage;
4. caused by riot, and civil commotion;
5. caused directly or indirectly by or contributed to by fire, or occurring during a fire in the building in which the premises are located.

### C. DEFINITIONS

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Wherever used in this Form

1. **"Custodian"** means
  - a. the Insured if an individual;
  - b. a member of the firm, if the Insured is a co-partnership;
  - c. any officer of the Insured if the Insured is a corporation;
  - d. any person who is in the regular employ of the Insured and is duly authorized by the Insured to act as paymaster, messenger, collector, driver, cashier, clerk, or sales person, and while so acting to have the care and custody of property insured hereby;
  - e. in no event shall a watchman, janitor, or porter be considered a custodian;
2. **"Forcible Entry"** means

- a. with respect to a chest, safe, or vault entry made by actual force and violence as evidenced by visible marks made by tools, explosives, electricity, gas, or other chemicals;
  - b. with respect to premises, entry made by actual force and violence as evidenced by visible marks made by tools, explosives, electricity, gas, or other chemicals upon, or physical damage to, the exterior of the premises at the place of such entry, and forcible entry shall include forcible exit as evidenced at the place of such exit;
- 3. **"Merchandise"** means only merchandise usual to the business of the Insured described in the Declarations;
  - 4. **"Money"** means only currency, coin, bank notes, and bullion;
  - 5. **"Premises"** means the interior of that portion of the building in the Declarations occupies solely by the Insured in conducting business;
  - 6. **"Robbery"** means the stealing of property from the possession of a custodian;
    - a. by violence or threats of violence to the custodian, used to extort the property stolen or prevent or overcome resistance to the stealing thereof;
    - b. by any other overt criminal act committed in the presence of the custodian and of which the custodian is cognizant at the time;
    - c. who has been killed or disabled by injuries sustained accidentally;
  - 7. **"Securities"** means all negotiable or non-negotiable instruments or contracts representing either money or other property and includes revenue and other stamps in current use, tokens, and tickets, but shall not include money.

## D. TRUSTEE AGREEMENT

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If more than one person or interest is named herein or shall be named hereafter as the Insured,

- 1. the limit of the Insurer shall not exceed the amount of which it would have been liable if only one person or interest had been so named, and
- 2. the Insured whose name first appears in the Declarations is hereby constituted a trustee to act for and represent any and all of the other persons and interests hereby insured, whether designated by name or not.

## E. PROOF OF LOSS AND PROSECUTION

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- 1. Proof of loss under oath on forms provided by the Insurer, in such detail as required by the Insurer, including reasonable evidence of the commission of a robbery, theft or burglary to which the loss or damage was due, particulars of the interest of the Insured and all others in the property in respect of which indemnity is claimed, of the encumbrances thereon and of all other insurance whether valid or not, shall be provided to the Insurer or to the authorized agent or broker through whom the policy was issued, within sixty days from the date of discovery of the loss.
- 2. The Insured upon request of the Insurer
  - a. shall render every assistance to facilitate the investigation and adjustment of any claim, exhibiting for that purpose any and all records, papers, and vouchers bearing in any way upon the claim made and
  - b. shall submit together with all associates in interest and such employees as the Insured may be able to encourage to submit, to the Insurer to secure the arrest and prosecution of the offenders and the recovery of the property.
- 3. In the event of loss for which claim is made the Insured shall, if the Insurer so requests in writing, take legal action at the expense of the Insurer to secure the arrest and prosecution of the offenders and the recovery of the property.

## F. OWNERSHIP OF PROPERTY

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The insured property may be owned by the Insured or held by the Insured in any capacity other than as postmaster or postmistress, whether or not the Insured is liable for such loss or damage as is insured hereby, provided that the Insurer shall not be liable for such damages to the premises unless the Insured is the owner thereof or is liable for such damage thereto.

## A. MERCHANDISE NOT OWNED BY THE INSURED

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In the event of a claim for loss of or damage to property not owned by the Insured, the Insurer may adjust such loss or damage either with the Insured or with the owner of such property and payment of such loss or damage to the Insured or owner shall constitute full satisfaction of the claim. If legal proceedings are taken against the Insured to recover for such loss or damage the Insured shall immediately notify the Insurer in writing and the Insurer shall have the right at its option to conduct and control the defense in the name of and on behalf of the Insured.

## B. VALUATION OF PROPERTY AND REPLACEMENTS

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The Insurer may repair or replace the property damaged or lost with property of like quality or pay for the same in money as the Insurer may elect. In no case shall the Insurer be liable in respect of loss or damage to

1. property other than securities and property held by the Insured as a pledge or as collateral for an advance or loan, for more than the actual cash value thereof determined after due allowance for depreciation at the time the loss or damage was discovered by the Insured.
2. Securities, for more than the cost of an equivalent amount of securities of the same issue purchased by or at the instance of the Insurer; provided however, that if, prior to such purchase by or at the instance of the Insurer, the Insured shall be compelled by the demands of a third party or by market rules, to assume the cost of an equivalent amount of securities of the same issue, and shall notify the Insurer, in writing, of such compulsion, such cost shall be taken as the value of such securities. If the securities cannot be replaced and the value cannot be established it may be determined by agreement or by arbitration;
3. property held by the Insured as a pledge or as collateral for an advance or loan, for more than the value of the property as determined and recorded by the Insured when making the advance or loan. In the absence of such record the liability of the Insurer shall be limited to the unpaid portion of any advance or loan plus accrued interest at legal rates.

## C. INSPECTION AND SUSPENSION

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The Insurer shall be permitted to inspect the premises at any reasonable time. If the Insured fails to carry out recommendations of the Insurer for improvement of the risk, the Insurer may suspend the insurance by written notice. A pro rata refund will be allowed for the period of suspension.

## D. RECOVERIES

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Any property for which the Insurer has paid indemnity shall become the property of the Insurer but the Insured shall be entitled to it upon reimbursing the Insurer the indemnity paid. The party to this contract recovering any such property shall immediately notify the other party in writing.

## E. LOSS CLAUSE

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Loss under any item of this Form shall not reduce the applicable amount of insurance.

## F. SECURITIES

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In the event of loss of securities the Insured shall take all reasonable means to prevent their negotiation, sale, or retirement.



## UNDERWATER INSTRUCTORS PROFESSIONAL LIABILITY INSURANCE

**NOTICE:** THIS IS A CLAIMS MADE INSURANCE FORM. AS SET FORTH BELOW, COVERAGE UNDER THIS INSURANCE APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE PERIOD OF INSURANCE. NOTICE OF CLAIMS MUST BE GIVEN IMMEDIATELY. UPON TERMINATION OF THIS INSURANCE, THERE IS A MAXIMUM NINETY (90) DAY REPORTING PERIOD. PLEASE REVIEW THIS INSURANCE WORDING CAREFULLY.

In consideration of the payment of the premium and in reliance upon the statements in the Insured's application and subject to the insuring agreements, declarations, coverages, definitions, conditions, limitations, warranties, exclusions, endorsements and any other written material contained in the Policy of which this wording forms a part of, the Underwriters agree with the Insured as follows:

### A. INSURING AGREEMENTS

#### 1. COVERAGE - CLAIMS MADE

- a. Subject to the Limit of Liability for Damages, the Underwriters agree to pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as Damages for Bodily Injury and/or Property Damage for Claims arising from an Event caused by any negligent act, error or omission in the rendering of or failure to render Professional Services by an Insured.
- b. This insurance only applies to Claims first made against the Insured during the period of this insurance as shown on the Policy Declarations Page arising from Events occurring subsequent to the retroactive date as shown on the Policy Declarations Page. Claims arising from the same Event made against the Insured over more than one period of insurance shall be deemed to have been made against the Insured during the period of insurance in which the first Claim is made. If during the period of insurance the Insured first becomes aware of and gives written notice to Underwriters of an Event occurring subsequent to the retroactive date likely to give rise to a Claim hereunder, then any subsequent Claim made against the Insured arising from such Event shall be deemed to have been first made during the period of insurance in which the Event was first reported.
- c. If this insurance is not renewed or is canceled then, after termination of the last effective period of insurance, coverage will be provided for Claims arising from Events reported no more than ninety (90) days thereafter, provided that the Event occurred subsequent to the retroactive date and prior to termination of this insurance. After the ninety (90) day period, all coverage shall cease for any Claim arising from any Event which has not been previously reported as specified in this insurance. The ninety (90) day period shall not apply if this insurance is canceled due to non-payment of premium.

#### 2. DEFENSE, SETTLEMENT, SUPPLEMENTARY PAYMENTS

- a. The Underwriters further agree to defend any Claim against the Insured (providing said suit is brought within the Territory) alleging Damages for Bodily Injury and/or Property Damage which are covered and payable under the terms of this insurance, even if any of the allegations of the Claim are groundless, false or fraudulent. The Underwriters shall have the right to make such investigation and settlement of any Claim as deemed expedient and in their sole discretion.

The Underwriters shall not be obligated to pay any Claim after the applicable limit of Liability for Damages has been exhausted by payment of judgments, awards or settlements, or any combination thereof hereunder.

The Underwriters shall not be obligated to defend any Claim after the applicable Limit of Liability for Defense Expenses has been exhausted.

- b. TERRITORY

Territory means worldwide.

- c. DEFENSE EXPENSES

Defense Expenses means:

- (1) All expenses incurred by the Underwriters in defending a Claim, all costs taxed against the Insured in any such suit and all interest on the entire amount of the judgment therein which accrues after the entry of the judgment (post-judgment interest) and before the Underwriters have paid or tendered or deposited to court that part of the judgment which does not exceed the limit of Liability for Damages thereon.

- (2) Premiums on appeal bonds required in any such defended suit provided the counsel retained by the Underwriters has a reasonable belief in the success of an appeal and the Insured can qualify for an appeal for such amounts as shall exceed the Limit of Liability for Damages. The Underwriters shall have no obligation to apply for or furnish an appeal bond.
- (3) All reasonable expenses, other than loss of earnings, incurred by the Insured at the Underwriters' request, and/or reasonable investigatory fees and/or expenses directly incurred by the Insured with Underwriters' prior agreement.

### 3. LIMIT OF LIABILITY

- a. The Limit of Liability for Damages as specified on the Policy Declarations Page is the total limit applicable for any one Event regardless of the number of Claims made as a result of said Event or the number of Insureds against whom Claims have been made. The aggregate limit specified on the Policy Declarations Page is the maximum Underwriters will pay for Damages on Claims made during the annual period of the insurance regardless of the number of Events resulting in Claims made during the period of insurance.
- b. The Limit of Liability for Defense Expenses as specified on the Policy Declarations Page is the total limit applicable for any one Event regardless of the number of Claims made as a result of said Event or the number of Insureds against whom Claims have been made. The aggregate limit specified on the Policy Declarations Page is the maximum Underwriters will pay for Defense Expenses on Claims made during the annual period of the insurance regardless of the number of Events resulting in Claims made during the period of insurance.

## B. ADDITIONAL DEFINITIONS

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### 1. BODILY INJURY

Bodily Injury means Bodily Injury, mental anguish, mental injury, emotional distress only following physical injury sustained by a person.

### 2. CLAIM

Claim means a written demand for Damages received by an Insured, including service of suit.

### 3. DAMAGES

Damages means a compensatory monetary judgment or award (including pre-judgment interest) or settlement entered into with the Underwriters' prior written consent, and does not include:

- a. Defense Expenses;
- b. Punitive or exemplary damages, fines, judicial sanctions, penalties, or any damages which are a multiple of compensatory damages;
- c. The return or restitution of fees, compensation, profits, charges and/or expenses paid to the Insured for services rendered;
- d. Judgments or awards deemed uninsurable by law.

### 4. EVENT

Event means an accident which occurs while the claimant or claimant's decedent is in the water, entering the water, exiting the water or preparing to enter the water in connection with Diving instruction or supervision, including Scuba (self-contained underwater breathing apparatus), snorkeling and swimming.

### 5. INSURED

Each of the following is an Insured under this insurance to the extent set forth below:

- a. The Named Insured shall be the individual identified on the Declarations Page of the Policy.
- b. Any Additional Insured named by endorsement to a Policy.
- c. The heirs, administrators and legal representatives of any Insured if the Insured is dead, incapacitated or bankrupt, but only as respects Professional Services rendered prior to such Insured's death, incapacity or bankruptcy.

The following are not insured under this insurance:

- (1) The employer of an Insured.
- (2) The employee of an Insured.
- (3) Any corporation, partnership or joint venture of which an Insured is a director, officer, partner, joint venturer, stockholder or employee.

### 6. PROFESSIONAL SERVICES

Professional Services means instruction and supervision of scuba diving, snorkeling and swimming only as approved and sanctioned by the diver training associations listed on the Declaration Pages.

## 7. PROPERTY DAMAGE

Property Damage means physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it.

## C. EXCLUSIONS

Coverage is not afforded under this insurance:

1. For any Claim by an Insured against another Insured.
2. For any Claim made by an employer against any Insured who is employed by or representing such employer.
3. For any obligation for which the Insured or any carrier as his/her insurer may be held liable under any worker's compensation law, unemployment compensation or disability benefits law, or under any similar or related law including but not limited to the Jones Act, the U.S. Longshoremen and Harbor Workers Act, the Americans with Disabilities Act, and any civil rights laws or legislation.
4. For Bodily Injury to any employee of the Insured arising out of and in the course of his/her employment by the Insured, including any obligation to indemnify another in whole or in part, for such Bodily Injury.
5. For liability assumed by the Insured under any contract or agreement.
6. For Bodily Injury and/or Property Damage arising out of the ownership, maintenance, operation, use, loading or unloading of any automobile, aircraft or watercraft.
7. For Property Damage to:
  - a. Property owned or occupied by or rented to the Insured;
  - b. Property used by the Insured; or
  - c. Property in the care, custody or control of the Insured or property over which the Insured is for any purpose exercising physical control. (This exclusion does not apply to swimming pools rented by, used by, or occupied by the Named Insured.)
8. For any payments in the nature of fines, judicial sanctions, penalties, punitive and/or exemplary damages or multiples of compensatory damages.
9. For any Claim or Event reported to another insurance company prior to the inception of this insurance.
10. For any Claim arising out of any intentional, willful or deliberate act committed by or at the instigation of the Insured.
11. For any Claim arising out of invasion of privacy, libel, slander or defamation of character, false arrest, detention or imprisonment, assault or battery, or wrongful entry or eviction, including any allegation that the violation of any civil right caused or contributed to such Claim.
12. For any Claim which is directly or indirectly attributable to any failure to comply with any applicable statute, regulation, ordinance, directive or order, provided that the failure to comply is an intentional, willful or deliberate act or omission of the Insured.
13. For any Claim arising out of discrimination by the Insured, including, but not limited to, age, color, race, sex, creed, national origin, marital status, mental or physical disability.
14. For any Claim arising out of infringements of trademark, trade name, patent or copyright.
15. For any Claim based on the insolvency or bankruptcy of any person, firm or organization.
16. For any Claim arising out of the performance of a criminal act or caused by an Insured while under the influence of alcohol, intoxicants, narcotics or any mind-altering substances.
17. For any Claim arising out of or resulting from sexual abuse or harassment or licentious, immoral or sexual behavior, whether or not such act is intended to lead to, or culminate in any sexual act, whether caused by, at the instigation of, at the direction of, or as a result of any act or omission by the Insured, his/her employees, patrons or from any causes whatsoever.
18. For any Claim in any way involving potential or actual transmission of or exposure to Human Immunodeficiency Virus (HIV), hepatitis, or any other infectious disease or any complex or syndrome related thereto, or to any Claim in any way relating to the use or misuse or confidentiality of any information relating to HIV disease, hepatitis, or any other infectious disease, including the failure to disclose the health status of any Insured.
19.
  - a. For any Claim relating to the actual, alleged or threatened discharge, dispersal, release or escape of Pollutants, however caused or whenever or wherever happening.

b. For any request, demand or liability to test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize Pollutants, whether or not any of the foregoing are or should be performed by the Insured or by others.

Pollutants means any electromagnetic transmissions or fields, or any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste, including medical waste. Waste also includes materials to be recycled, reconditioned or reclaimed.

20. For any Claim arising out of any diving activity planned or conducted to a depth in excess of 130 feet or 40 meters.
21. For any Claim arising out of any diving activity conducted using breathing gas mixtures other than compressed air and / or enriched air (EANx / Nitrox).
22. For any Claim arising out of any diving activity conducted using other than open circuit self-contained underwater breathing apparatus (SCUBA) or semi-closed underwater breathing apparatus (semi- closed rebreathers).
23. For any Claim arising from acts other than those specifically approved and sanctioned by the certification organization(s) listed on the declaration page for the Insured in his/her capacity as a swim instructor, lifeguard, skin diving leader, divemaster, instructor, divecon, assistant instructor or sustaining instructor.
24. For any Claim arising from acts other than those specifically approved and sanctioned for the Insured in his/her membership category as defined by the diver certification organization(s) listed on the declaration page.
25. For any Claim arising out of the failure of any product, including Scuba and snorkeling equipment, whether owned or non-owned by an Insured.
26. For any Claim arising out of any commercial or industrial diving activities, including but not limited to welding, construction, salvage, demolition, destruction, repair, maintenance, inspection of vessels or other in water structures, or the collection of organisms for consumption or commercial use.
27. For any Claim arising out of any Event in which the insured left or allowed the uncertified student involved in the claim to be unattended during in-water instruction, tests, or exercises.
28. For any Claim arising out of any Event in which the insured failed to provide the student involved in the claim with direct supervision to the degree required for the specific level of training being provided as defined by the diver certification organization(s) listed on the declaration page.
29. For any Claim arising out of any Event in which the insured failed to obtain a fully completed and signed medical history form from the student involved in the claim prior to any in-water instruction, tests, or exercises; and in the case of a minor the failure to have obtained the minor's parent's or guardian's signatures on the medical history form.
30. For any Claim arising out of any Event in which the medical history form obtained from the student involved in the claim contained contraindications to participation in diving activities and the insured failed to require the student to obtain medical approval, based on a medical examination, from a licensed physician (who is not the student) prior to any in-water instruction, tests, or exercises.
31. For any Claim arising out of any Event involving instruction in which the insured failed to obtain from the student involved in the claim a fully completed and signed release of liability / assumption of risk agreement naming the insured as a released party and developed by or approved by the certification organization through which the training was offered; and in the case of a minor the failure to have obtained the minor's parent's or guardian's signatures on the release of liability / assumption of risk agreement.
32. For any Claim arising out of any Event involving any diving, snorkel or swimming activities in which the insured failed to obtain from the participant involved in the claim a fully completed and signed release of liability / assumption of risk agreement naming the insured as a released party.
33. For any Claim arising out of any Event involving any diving, snorkel or swimming activities in which the insured was not an active member in good standing with their certification organization at the time of the Event.
34. For any Claim arising out of any Event involving instruction in which the insured has failed to maintain records for the purpose of recording the progress of the student involved in the claim.
35. For any Claim arising out of any Event involving instruction in which the insured failed to maintain records for the purpose of evaluating the understanding of the instructional material by the student involved in the claim.
36. For any Claim arising out of any Event in which the insured has failed to maintain all records relating to the student involved in the claim for a minimum of five (5) years.
37. For any Claim arising out of any Event involving any training or supervisory dive conducted by the insured that is planned for depths greater than 100 meters / 330 feet or planned using gas mixes other than compressed air, oxygen, enriched air or tri-mix.
38. For any Claim arising out of any Event involving any training or supervisory dive conducted by the insured that was not in compliance with the standards, procedures and policies of the certification organization that sanctioned the training or diving activity involved.
39. For any Claim arising out of any Event involving the insured's conduct of an introductory experience program (any program designed to introduce uncertified divers to recreational scuba diving via a supervised, controlled open water experience) that was not in compliance with the standards, procedures and policies of the certification organization that sanctioned the training or diving activity involved.

40. For any Claim arising out of any Event involving the insured's conduct of an introductory experience program (any program designed to introduce uncertified divers to recreational scuba diving via a supervised, controlled open water experience) where the participant to Instructor ratio exceeds two to one. This ratio may be increased to four participants per Instructor when the Instructor is assisted by a certified Assistant Instructor or certified Dive Master.
41. For any Claim arising out of any Event involving the insured's conduct of an introductory experience program (any program designed to introduce uncertified divers to recreational scuba diving via a supervised, controlled open water experience) involving participants under the age of 15 where the participant to instructor ratio exceeds one to one.

## D. CONDITIONS

### 1. INSURED'S DUTIES ARISING OUT OF A CLAIM OR EVENT.

- a. As a condition precedent to the protection afforded by this insurance, the Insured shall immediately give to the Underwriters through the designated persons or entity shown on the Policy Declarations Page written notice of every Claim first made against the Insured during the period of this insurance, including, but not limited to, every written demand, notice, summons or other process received by the Insured or his/her representative.
- b. The Insured must also notify Underwriters through the designated persons or entity shown on the Policy Declarations Page as soon as practicable of an Event likely to give rise to a Claim hereunder or of the receipt from any person of an intention to hold the Insured responsible for any Event.

In any such case, the Insured shall, upon request, give the Underwriters such information as the Underwriters in their sole discretion may reasonably require.

### 2. ASSISTANCE AND COOPERATION

The Insured shall cooperate with the Underwriters and, upon the Underwriters' request, assist in making settlements, in the conduct of suits, and in enforcing any rights of contribution or indemnity against any person or organization who may be liable to the Insured because of Bodily Injury or Property Damage with respect to which insurance is afforded hereunder and the Insured shall attend hearings and trials and assist in securing and giving evidence, and obtaining the attendance of witnesses.

### 3. VOLUNTARY PAYMENTS

The Insured shall not voluntarily make any payment, make any admission of responsibility, assume any obligation or incur any expense other than for first aid to others at the time of the Event.

### 4. SUBROGATION CLAUSE

Upon payment under this insurance, the Underwriters shall be subrogated to all the Insured's rights of recovery against any person or organization, and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall do nothing to prejudice such rights.

### 5. OTHER INSURANCE

If other valid and collectible insurance is available to the Insured covering a Claim also covered by this policy, the insurance afforded by this policy shall be in excess of and shall not contribute with such other insurance. Notwithstanding any "other insurance" provision contained in any other valid and collectible insurance available to the Insured, the "other insurance" provision contained herein is controlling, and the Underwriter shall not make any payments under this insurance until the limits of the Insured's other insurance have been exhausted. Subject to the preceding, the insurance afforded hereunder is in excess of and shall not contribute with any other valid and collectible insurance which has been specifically contracted for the Insured or another under any policy in which the Insured is a Named or Additional Insured. Nothing herein shall be construed to make this insurance subject to the terms, definitions, conditions and limitations of the other insurances.

### 6. LEGAL ACTION AGAINST THE UNDERWRITERS

No person or organization has a right under this insurance:

- a. To join the Underwriters as a party or otherwise bring the Underwriters into a suit asking for Damages from any Insured; or
- b. To sue the Underwriters on this insurance unless all of its terms have been fully complied with.

### 7. FALSE OR FRAUDULENT CLAIMS

If the Insured shall give notice of any Claim or reports an Event likely to give rise to a Claim knowing the same to be false or fraudulent, this insurance shall become void and all rights hereunder shall be forfeited by the Insured.

### 8. INSPECTION AND AUDIT

The Underwriters shall be permitted but not obligated to inspect the Named Insured's property, operations or records at any time. Neither the Underwriters' right to make inspections, nor the making thereof, nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the Named Insured or others to determine or warrant that such property or operations are safe or healthful or are in compliance with any law, rule or regulation.

The Underwriters may examine and audit the Named Insured's books and records at any time during the Policy period and extensions thereof and within three years after the final termination of this insurance, as far as they relate to the subject matter of this insurance.

#### **9. CHANGES**

Notice of any Agent or knowledge possessed by any Agent or by any other person shall not effect a waiver or a change in any part of this insurance or stop the Underwriters from asserting any right under the terms of this insurance, nor shall the terms of this insurance be waived or changed, except by endorsement issued to form a part of this insurance signed by an authorized representative of the Underwriters.

#### **10. ASSIGNMENT**

No assignment of interest under this insurance shall be valid unless the written consent of the underwriters is endorsed hereon.

#### **11. APPLICATION**

By acceptance of this insurance, the Named Insured agrees that the statements in the application are his/her representations, that such representations are accurate and complete, that such representations are material to the risk undertaken by the Underwriters in this insurance, and that this insurance is issued and continued in force in reliance upon the truth of such representations.

#### **12. NOTICE OF CANCELLATION**

It is understood and agreed that any Policy may be canceled by the Underwriters by mailing to the holder of such Policy at the address shown in that Policy written notice stating when [not less than thirty (30) days thereafter] such cancellation shall be effective, except in the case of cancellation for non-payment of premium, for which written notice stating when [not less than ten (10) days thereafter] such cancellation shall be effective. The mailing of notice of aforesaid shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of this insurance period. Delivery of such written notice either by the Named Insured or by the Underwriters shall be equivalent to mailing. It is also understood and agreed that the premium applicable to individual Evidences of Insurance issued hereunder are considered fully earned at the inception of such Evidences.

## EXHIBIT 2

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**From:** Peter Meyer <pmeyer@owlunderwriting.com>  
**Sent:** Thursday, August 12, 2021 3:21:16 PM  
**To:** Samuel Ryan <sryan@jkj.com>; Anthony Limburg <alimburg@jkj.com>; Chuck <lv2divenh@yahoo.com>  
**Cc:** Ryan Meyer <rmeyer@owlunderwriting.com>; Robin Melone <rmelone@wadleighlaw.com>  
**Subject:** Dive Facility Insurance renewal FD001261 (PS Dive Shop, LLC DBA Portsmouth Scuba)

## **This is a notice of cancellation of Policy FD001261**

Gentlemen, the above noted policy is being cancelled under the policy provisions for cancellation with 30 days notice. Effective September 11, 2021 this policy will be cancelled in its entirety, with pro-rata premium return. Our formal endorsement is attached.

### **Earned / Return Premium**

As per the attached endorsement, the Earned Premium is \$1308.29 and the Return Premium is \$7355.87

### **Claims Made coverage reporting period**

Please note that Section IV Underwater Liability is a Claims Made form and requires that any and all incidents that may be covered, and occurring within the policy period, be reported within 90 days of the policy expiry date. That means that any and all incidents occurring within the policy period do need to be reported within 90 days of the cancellation date, September 11, 2021. After 90 days all coverage will cease for non-reported incidents.

As per New Hampshire Insurance regulations we are obliged to offer an extended reporting period for claims Made coverage and can offer a 365 day extension of the reporting period for a flat additional premium of \$1900.00 if desired. Please contact us if you wish to explore this option.

### **Reason for Cancellation**

Our investigation of the Cianchette incident (PS Dive Shop, LLC DBA Portsmouth Scuba / B0180MA1903105 / FD001261 / Tonya Cianchette) has revealed breaches of PADI Training standards, and certain terms and conditions of the policy, which we feel are contrary to the intent of the coverage provided (I.E. the insured agreed in the application for coverage to follow all PADI Standards and obtain appropriate waivers and medical clearance as required). As a result we are choosing to terminate this policy under the policy cancellation provisions.

This cancellation does not affect any obligation of underwriters to respond to the Cianchette matter, nor any other ongoing claim(s), which have been, or may be, reported under the policy, as per policy terms and conditions. First Dive have no authority with respect to coverage for the Cianchette matter.

We trust you understand the reason for this cancellation, however, please feel free to contact the undersigned with any questions at all.

Best regards.



Peter Meyer

Office: 604-409-8094 Ext: 102

Cell: 604-250-1849

Please note our new phone numbers.

This e-mail message is confidential, for the exclusive use of the addressee.

Any unauthorized disclosure, use or dissemination, either whole or partial, is prohibited.

If you are not the intended recipient of the message, please notify the sender immediately by return e-mail

